DISCUSSION DRAFTS ADDRESSING HYDROPOWER REGULATORY MODERNIZATION AND FERC PROCESS COORDINATION UNDER THE NATURAL GAS ACT

HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY AND POWER

OF THE

COMMITTEE ON ENERGY AND COMMERCE

HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

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SUBMITTED MATERIAL

[1] Available at: *http://docs.house.gov/meetings/IF/IF03/20150513/103443/BILLS-114pih-DiscussionDraftonFERCProcess.pdf.*

[2] Available at: *http://docs.house.gov/meetings/IF/IF03/20150513/103443/BILLS-114pih-DiscussionDraftonHydropowerRegulatoryModernization.pdf.*

DISCUSSION DRAFTS ADDRESSING HYDROPOWER REGULATORY MODERNIZATION AND FERC PROCESS COORDINATION UNDER THE NATURAL GAS ACT

WEDNESDAY, MAY 13, 2015

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ENERGY AND POWER,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:03 a.m., in room 2123 of the Rayburn House Office Building, Hon. Ed Whitfield (chairman of the subcommittee) presiding.

Members present: Representatives Whitfield, Olson, Barton, Shimkus, Pitts, Latta, Harper, McKinley, Griffith, Johnson, Long, Ellmers, Mullin, Hudson, Rush, McNerney, Tonko, Green, Sarbanes, Loebsack, and Pallone (ex officio).

Staff present: Nick Abraham, Legislative Associate, Energy and Power; Charlotte Baker, Deputy Communications Director; Will Batson, Legislative Clerk; Leighton Brown, Press Assistant; Allison Busbee, Policy Coordinator, Energy and Power; Patrick Currier, Counsel, Energy and Power; Tom Hassenboehler, Chief Counsel, Energy and Power; Ben Lieberman, Counsel, Energy and Power; Brandon Mooney, Professional Staff Member, Energy and Power; Chris Sarley, Policy Coordinator, Environment and Economy; Christine Brennan, Democratic Press Secretary; Jeff Carroll, Democratic Staff Director; Caitlin Haberman, Democratic Professional Staff Member; Rick Kessler, Democratic Senior Advisor and Staff Director, Energy and Environment; and John Marshall, Democratic Policy Coordinator.

OPENING STATEMENT OF HON. ED WHITFIELD, A REPRESENTATIVE IN CONGRESS FROM THE COMMONWEALTH OF KENTUCKY

Mr. WHITFIELD. I would like to call the hearing to order this morning.

Today we are going to have another discussion on a discussion draft addressing hydropower regulatory modernization, and the FERC process coordination under the Natural Gas Act. As you know, we have had a series of meetings and hearings on drafts that we want to incorporate in an overall energy bill, and today, as I said, we are going to be focusing on hydroelectric power and natural gas. And our goal is to help unleash the potential of these

affordable domestic energy sources by modernizing the applicable regulatory process at FERC.

If ever there were such a thing as a bipartisan energy source, it is certainly hydroelectric, and natural gas would be at the top of the list. So I look forward to working with all of my colleagues to minimize the red tape and maximize the benefits of these two sources for the sake of affordable energy, the environment, national security, job creation, and certainly economic growth.

Hydroelectric is a source of clean, reliable, and affordable power, yet the federal process for licensing new capacity or relicensing existing capacity is considerably more cumbersome than for other renewable sources. For example, I have been told that it is not unusual that these hydropower projects to obtain the permits sometimes takes on average maybe up to 5 years, and I know we are going to hear today about a process that has taken 15, 16 years. But on the other side of the coin, for wind and solar projects, the Administration is so focused on moving those that you can get permits in 18 months, and then also you get exemptions from the Migratory Bird Act and also the Eagle Protection Act. So there is a lot of favoritism in those areas.

So this discussion draft will establish FERC as the exclusive authority on hydroelectric licensing, and includes several provisions to eliminate redundant and unnecessary requirements, and put the review process on a reasonable schedule. It also encourages the creation of new hydroelectric power from existing non-powered dams by providing a licensing exemption for qualifying facilities. In all cases, all cases, the environmental and safety requirements for these facilities will be maintained. So we are not taking away any power from the agencies that have that responsibility.

A few weeks ago, we had a hearing and I talked about Dire Straits, they had a song, Money for Nothing, Chicks are Free. Today, we have the words of Woody Guthrie in his song, Roll on Columbia, and it goes like this, and up on the river is the Grand Coulee Dam, the mightiest thing ever built by man, to run these great factories and water the land, it is roll on, Columbia, roll on. So we want to help Woody Guthrie keep this water rolling, produce this hydropower. Now, he didn't talk about natural gas, but FERC is also involved in the approval process for interstate natural gas pipelines, and the problems are much the same as with hydroelectric power: a slow and unpredictable approval process that is out of touch with America's energy needs today. This is particularly true of natural gas, given the tremendous increases in domestic output over the last decade. So getting that gas to the power plants and factories and consumers that need it will require new pipelines as well as upgrades of existing pipelines. In fact, this was a major point in the Department of Energy's Quadrennial Energy Review. It was clear that a more streamlined permitting process will help to build these pipelines.

So that is out goal. We want an efficient, quick process, but we want to protect the environment and make sure that we provide adequate protections for safety and everything else. So that is what our hearing is about this morning.

I am really delighted, we have two panels of witnesses, and I will be introducing our first panel in just a minute. At this time, I would like to recognize Mr. Rush for his opening statement.

[The prepared statement of Mr. Whitfield follows:]

PREPARED STATEMENT OF HON. ED WHITFIELD

This morning we will discuss two additional components of our bipartisan energy package that deal with hydroelectric power and natural gas. Our goal is to help unleash the potential of these affordable domestic energy sources by modernizing the applicable regulatory process at the Federal Energy Regulatory Commission (FERC). If ever there were such a thing as bipartisan energy sources, hydroelectric and natural gas would be at the top of the list, so I look forward to working with all of my colleagues to minimize the red tape and maximize the benefits of these two sources for the sake of affordable energy, the environment, national security, job creation, and economic growth.

Hydroelectric is a source of clean, reliable, and affordable power, yet the federal process for licensing new capacity or relicensing existing capacity is considerably more cumbersome than for other renewable sources. Congress has long recognized the need to upgrade the process in order for hydroelectric power to meet its full potential. But as it is, even relatively small hydroelectric projects, including ones that would electrify existing dams with negligible environmental change, are often subjected to years of delays that can prevent these projects from getting off the ground. And relicensing of existing hydroelectric facilities can be more of a hurdle than it needs to be.

The discussion draft establishes FERC as the exclusive authority on hydroelectric licensing and includes several provisions to eliminate redundant and unnecessary requirements and put the review process on a reasonable schedule. It also encourages the creation of new hydroelectric power from existing nonpowered dams by providing a licensing exemption for qualifying facilities. In all cases, the environmental and safety requirements for these facilities will be maintained.

In the words of Woody Guthrie in his song, "Roll on Columbia":

And up on the river is the Grand Coulee Dam,
The mightiest thing ever built by a man,
To run these great factories and water the land,
It's roll on, Columbia, roll on.

This discussion draft helps carry on Woody Guthrie's work.

Now Woody Guthrie never sang about natural gas, but FERC is also involved in the approval process for interstate natural gas pipelines, and the problems are much the same as with hydroelectric power—a slow and unpredictable approval process that is out of touch with America's energy needs today. This is particularly true of natural gas given the tremendous increases in domestic output over the last decade.

Getting that gas to the power plants and factories and consumers that need it will require new pipelines as well as upgrades of existing pipelines. In fact, this was a major point in the Department of Energy's Quadrennial Energy Review (QER). The QER was clear that a more streamlined permitting process will help to build this new natural gas infrastructure. In particular, the current approval process is especially hampered by the involvement of multiple agencies and no clear deadlines. A December 2012 study conducted by the INGAA Foundation found that delays of more than 90 days have risen 28 percent after EPAct's permitting reforms, while delays of 180 days or more have risen 20 percent.

The discussion draft puts FERC firmly in charge and gives it the authority to enforce firm deadlines. Additional provisions prevent other unnecessary delays. And, as with the hydroelectric provisions, this discussion draft aims to modernize the review process in a manner that maintains all existing environmental and safety standards.

The hydroelectric and natural gas pipeline projects enabled by these discussion drafts will create a great many construction jobs. In addition to, the affordable energy produced by them will create still more jobs. It is time for the U.S. to make full use of our energy bounty, and these two discussion drafts are a strong step in that direction.

[The discussion draft on the FERC Process Coordination is available at: *http://docs.house.gov/meetings/IF/IF03/20150513/103443/BILLS-114pih-DiscussionDraftonFERCProcess.pdf.*]

[The discussion draft on Hydropower Regulatory Modernization is available at: *http://docs.house.gov/meetings/IF/IF03/20150513/103443/BILLS-114pih-DiscussionDraftonHydropowerRegulatoryModernization.pdf.*]

Mr. RUSH. I want to thank you, Mr. Chairman. Mr. Chairman, before I begin, I want to ask for unanimous consent that we hear you sing the Woody Guthrie song, you know.

Mr. WHITFIELD. Well, thank you. I will do that a little bit later.

OPENING STATEMENT OF HON. BOBBY L. RUSH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. RUSH. I want to thank you for holding the hearing. Unfortunately, Mr. Chairman, we are once again holding a hearing on two unrelated issues that each deserve their own separate consideration in their own right. The FERC process coordination under the Natural Gas Act is an updated version of H.R. 161 and H.R. 1900, which the subcommittee has previously examined, and is an attempt to expedite the FERC process for permitting natural gas pipelines. The biggest concern I have, Mr. Chairman, is one that I brought up in each of my previous attempts to modify this process, which is that this bill is simply a solution in search of a problem.

Mr. Chairman, FERC data shows that between 2009 and 2015, over 100 million natural gas pipeline projects were approved, spanning over 3,700 miles in 35 states, and with a total capacity of over 45 million cubic feet per day. Additionally, Mr. Chairman, while the average time from filing to approval was under 10 months, an overwhelming 91 percent of applications were decided within 12 months. Even the GAO has concluded that FERC's pipeline permitting process is both predictable and consistent, and pipelines are being built in a timely manner. In fact, Mr. Chairman, in testimony from stakeholders, ranging from the Interstate Natural Gas Association of America to Dominion Energy, this subcommittee has heard repeatedly that the current permitting process works well, and FERC has done a good job of deciding permits within a reasonable time period.

So, Mr. Chairman, the question remains, is there really a problem?

As far as the second and unrelated part of this hearing of dealing with the licenses of hydropower, I must say, Mr. Chairman, that this is the first time this subcommittee has even held an oversight hearing on this issue in at least the last 3 Congresses. Since I began as ranking member of this subcommittee in 2001, this is the first time we have even looked at this issue. And today's hearing does not have one single witness from any of the agencies who can testify on the impact that this draft legislation would have on any of our other natural resources that the citizens of this nation depend on in our waterways. Mr. Chairman, there is not one single representative from the Department of Interior, or commerce, or any of the state agencies who can testify on how this bill might impact our shorelines, our rivers, or our streams in regards to protecting the general public interest outside of the narrow consideration of providing hydropower. Mr. Chairman, there is not a single

witness on either panel who can provide this subcommittee with expert testimony on how taking authority away from other agencies, and consolidating power and decision making authority solely within FERC might impact the public interest in matters regarding environmental protection, or families visiting a lake having a sufficient access to boat, fish, hike, or swim.

Mr. Chairman, before we make it easier for private companies to take control of the use of the waters belonging to the people in this great nation, we should at least hear from the experts within those agencies that are responsible for protecting those interests.

Thank you, Mr. Chairman. I will yield back my time.

Mr. WHITFIELD. Gentleman yields back.

Mr. Upton is not here this morning. Is there anyone on our side of the aisle would like to make a statement? If not, then at this time I recognize the ranking member, Mr. Pallone, of New Jersey for 5 minutes.

OPENING STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. PALLONE. Thank you, Mr. Chairman. As I have said before, the reality of the energy picture in the United States is changing rapidly. As the committee of jurisdiction over national energy policy, it is eminently reasonable and appropriate for the committee to look closely at our new energy reality. So much has changed since the House last considered an energy bill, and it is our responsibility to carefully consider proposals to help us develop the energy policies of the future.

Two weeks ago, I expressed concern cramming two completely unrelated subjects into a single, two-panel hearing, and again, we are here examining two subjects; natural gas pipeline permitting and hydroelectric licensing, that are important and warrant not only separate legislative hearings, but they also should be proceeded by a thorough oversight. It has been years, and in the case of hydroelectric licensing, an entire decade since this committee has conducted oversight of either of the programs that these drafts aim to reconfigure. From my perspective, this committee should not be writing legislative solutions before members have a chance to examine the state of play, or even confirm that a problem actually exists.

While hydroelectric power can be an important source of no-emission base load generation, it also potentially poses major harm to fish and wildlife populations, water quality, and other important resources. Hydroelectric power depends on rivers for fuel, and those rivers belong to all Americans, not just those who sell or buy the power generated from it.

The Federal Power Act requires FERC to balance those competing interests in issuing a license because no one use of a river for power, drinking water, irrigation, recreation, or other use, should automatically take precedence. For instance, if a license might impact a protected resource such as a wild and scenic river, a national wildlife refuge, or a national park, then the appropriate federal agency responsible for that resource can put conditions on the license to ensure that the resource is protected.

Unfortunately, the draft proposal before us completely throws out decades of policy and case law in one fell swoop. There is nothing subtle about the draft's changes. It undermines the key provisions of current law that exist to conserve our natural resources and protected areas, and ensure a balanced approach to the use of our nation's rivers. This legislation will only result in greater confusion, time-consuming litigation, and exacerbated and unnecessary delays of hydropower licenses. So I sincerely hope the majority will consider holding proper oversight hearings to inform members, and help facilitate constructive discussions on hydropower reform.

With regard to the other issue, the natural gas pipeline selling legislation, like the previous iterations of this bill. The draft is yet another solution in search of a problem. According to FERC, more than 91 percent of pipeline applications are reviewed within 1 year. I think that is pretty remarkable. And GAO concluded that the current FERC pipeline permitting process is predictable, consistent, and actually gets pipelines built. We have even heard pipeline companies testify that the process is generally very good.

So this legislation, in my opinion, is unnecessary and would disrupt the perfectly functioning permitting process. Instead, it imposes a laundry list of prescriptive, duplicative, and potentially harmful requirements on FERC and every agency involved in the permitting process. This would only slow down, rather than speed up the approval of interstate natural gas pipelines. The draft positions FERC as a policing agency charged with micromanaging other agencies in consideration of application, even determining the scope of their environmental review, and FERC doesn't have the expertise or resources to make those types of decisions. More problematic, the draft purports to address this resource issue by allowing applicants to provide extra funding for FERC staff or contractors to aid in the speedy review of pipeline applications. And this provision is troublesome and could lead to inappropriate relationships between applicants and FERC staff.

So, Mr. Chairman, I can't support either of the drafts before us today, and I urge the majority to rethink their proposals. Instead, I would like to work with you on energy legislation that benefits consumers as well as producers, promotes American jobs, protects our environment, and builds upon past successes to propel us into a better future.

I yield the balance of my time. Thank you, Mr. Chairman.

Mr. WHITFIELD. The gentleman yields back, and thank you very much for those statements. And that concludes the statements.

So as I said, we have two panel of witnesses, and on the first panel, we have the Honorable Paul R. LePage, who is the Governor of Maine. Governor, we appreciate your taking time to be with us today, and thank you for being willing to participate. In addition, we have Ann Miles, who is the Director of the Office of Energy Projects at FERC. Ms. Miles, thank you very much for joining us. And each one of you will be recognized for 5 minutes for your statement, and then we will open it up for questions.

So, Governor, I will begin with you, and you are recognized for 5 minutes. And the little box on the table has the lights which—red would mean stop, but if you are in mid-sentence, you can go

on and complete it. Thank you. And turn your microphone on also, thank you.

STATEMENTS OF HON. PAUL R. LEPAGE, GOVERNOR OF MAINE; AND ANN F. MILES, DIRECTOR, OFFICE OF ENERGY PROJECTS, FEDERAL ENERGY REGULATORY COMMISSION

STATEMENT OF PAUL R. LEPAGE

Governor LEPAGE. Good morning, Chairman Whitfield, Ranking Member Rush, and members of the subcommittee. Thank you for the opportunity to testify today, and the efforts that this committee will take to modernize our federal permitting process for energy infrastructure.

Natural gas and hydropower can provide competitive and clean energy for our economy. We need infrastructure, we plead with you, from pipelines to transmission lines, to take advantage of these plentiful resources. The people of New England want these projects done, but bureaucracy is preventing timely action. Bureaucracy has hijacked democracy.

Natural gas. New England has transitioned to natural gas to generate electricity. We have gone from 15 percent to almost 50 percent in the last 15 years. Our infrastructure has simply not kept up. Our pipeline cannot transport enough gas from Pennsylvania. This has caused prices to spike from $3 per million BTUs to $20 per million BTUs; some of the highest prices in the world. This has dramatic consequences for New England. In Maine, we lost two major employers. Electric bills for residential customers have skyrocketed. The average electric price in our region is now 17.3 cents per kilowatt hour. In some areas, bills have increased by as much as 100 percent. We need a sense of urgency at the federal level to permit natural gas infrastructure. States must step up to prioritize these projects. Together, it can get done.

It makes no sense to me why it should take 3 to 5 years to build a pipeline. We built several hundred miles within our state in 18 months. The legislation before you today would help empowering FERC to make deadlines for other federal agencies. As far as I am concerned, Washington could use a lot more deadlines.

Hydropower. The committee's proposal regarding hydropower is encouraging. This country has ignored the benefits of hydropower. New England knows that hydropower is necessary to provide clean, predictable power. New England governors met last month to discuss infrastructure and transmission line to Canada. The committee must work to overhaul our cross-border permitting laws. Maine shares a huge border with Canada. I am concerned when cross-border permitting becomes politicized, like it has with the Keystone Pipeline. This is not how we should be doing business with our neighbors to the north; Canada.

The committee draft legislation would exempt existing non-powered dams from the Federal Power Act if it does not significantly alter the dam. This is very sensible. We should remove roadblocks for getting power out of existing dams. Maine has a potential of 70 megawatts of additional hydropower available for non-powered dams.

Gentlemen, overzealous activists are taking advantage of federal bureaucracy. I can give you a number of examples. They are blocking affordable energy for our citizens and our businesses. Congress must back our country. We must take it back from the bureaucracy of Federal Government. I often say, you have heard the saying, too big to fail, well, I say Washington is getting too big to work. Congress must act.

And I thank you for your time.

[The prepared statement of Governor LePage follows:]

TESTIMONY OF
THE HONORABLE PAUL R. LePAGE
GOVERNOR
STATE OF MAINE

BEFORE THE
SUBCOMMITTEE ON ENERGY AND POWER
COMMITTEE ON ENERGY AND COMMERCE
U.S. HOUSE OF REPRESENTATIVES

DISCUSSION DRAFTS ADDRESSING
FEDERAL HYDROPOWER AND NATURAL GAS PERMITTING

MAY 13, 2015

Good morning Chairman Whitfield, ranking member Rush and members of the subcommittee. Thank you for the opportunity to testify today and for the efforts this Committee will take to modernize our federal permitting process for energy infrastructure.

America's energy challenges can be addressed with our continent's natural resources. Innovation, research and development, and private capital have catapulted our energy situation from one of weakness to one of strength. In particular, the natural gas production renaissance has lifted our economy and given American manufacturing a strategic competitive advantage.

While the speed of energy technology innovation has increased, our federal permitting process has languished. The process is often hijacked by activists who are not looking to improve projects or raise substantive environmental considerations. Rather, their objective is simply to block critical energy infrastructure across the country – to keep projects stuck in bureaucracy and to hold our economies back. In many cases, bureaucracy has replaced democracy in our country.

In Maine, we have seen firsthand the consequences of failing to advance energy projects. Unlike much of the northeast, Maine continues to have manufacturing jobs. Maine is the only New England state where the industrial sector is the largest consumer of energy. Margins are tight in the manufacturing sector, and sawmills and paper mills in Maine watch the price of energy very closely to ensure profitability.

In the winter of 2012 to 2013, it became apparent to some of our biggest employers that the region had major infrastructure challenges. Over the last 15 years, our region has become increasingly reliant on natural gas. New England's electricity production from natural gas has shifted from roughly 15 percent in 2000 to 44

percent in 2014 – but our natural gas infrastructure has not grown to meet this increased demand. Transportation of natural gas from the west to east hit a bottleneck that winter, causing prices to spike from $3 per MMBtu to nearly $20 per MMBtu. Prices in New England were the highest in the world, despite the fact that the most prolific gas production on the planet is less than a day's drive away.

In the winter as prices now spike with the cold temperatures, many factories will go idle. Since the bottleneck emerged over two years ago, the state has lost two major manufacturers, and many employers shut down for the coldest periods of the winter. It is not just manufacturing. The region has seen electric bills spike to an average price of 17.34 cents per kWh – increasing in some areas by as much as 100 percent. This disproportionately affects our elderly and low-income households, and it is costing our region billions of dollars in artificially high energy costs.

Natural Gas Permitting

We need a sense of urgency at the federal level to approve interstate pipelines that will address these energy price spikes and get energy to the market. The draft bill before you would, in my view, help modestly. As you know, there are multiple federal agencies involved in the permitting process, ranging from the Army Corps of Engineers to Fish and Wildlife. The draft bill would continue to use the expertise of these agencies, but firmly establishes the Federal Energy Regulatory Commission as the lead federal agency to coordinate review of the projects.

There are major projects proposed in New England to bring natural gas to households and employers. Federal law should reflect that these pipeline projects are critical to our economy, and there should be one lead agency that has the clear authority to coordinate the review of the projects. It makes no sense that it should take 3 to 5 years to construct a pipeline, especially when the economic consequences are massive.

I encourage the Committee to support the draft bill and continue to work to return our country to one that can carefully, but quickly, build the infrastructure that our country needs.

Hydropower Permitting

Our country has ignored the benefits of hydropower production and potential. New England is waking up to the fact that our region cannot meet our environmental objectives without additional hydropower resources and is partnering with our Canadian counterparts to take advantage of our largest trading partner's surplus of hydropower. We are now looking for a cross-border route for a transmission project, and we hope the federal government reviews the project that is selected by the region very quickly. To that end, I appreciate the Committee's efforts to streamline the approval of cross-border energy projects. The current process, established through a patchwork of Executive Orders, has become bogged down and

subject to potential political interference. Congress should replace the Presidential Permit review with clear statutory authority that establishes a more transparent and efficient review process for pipelines and electric transmission facilities that cross the borders of the United States with Canada or Mexico.

Domestically, we should also be promoting the development of hydropower, especially at existing facilities. Maine has one of the cleanest electricity-generating fleets in the country, and hydropower is a major factor producing 26 percent of the total power and 723 MegaWatts of installed capacity. My Administration has undertaken an inventory of hydropower in our state to see if we can add capacity to increase energy diversity and continue to lower pollution. The report was released this February and found the state has 68 unpowered dams that represent a total addition of approximately 70 MW of additional capacity, most of which are below 5 MegaWatts.

It makes no sense that these existing dams should be under the purview of the federal government through the Federal Power Act if they add power production. In these situations, the Federal Power Act just adds red tape and duplication. States should have the authority to permit these facilities and work with the local population and environmental agencies to transition a non-operational dam to one that is producing local, clean and consistent power.

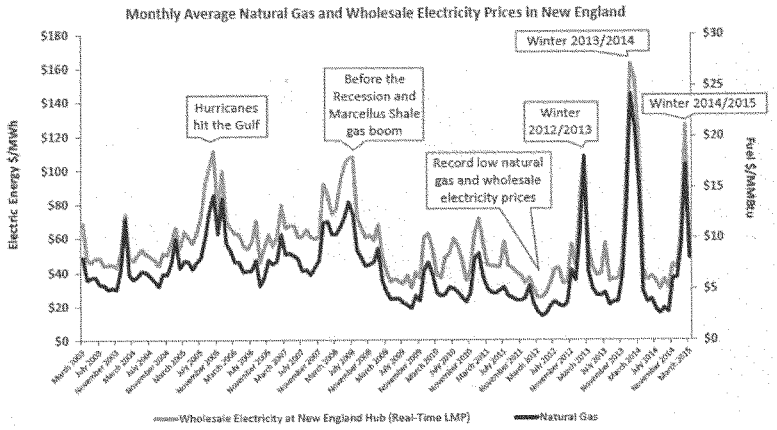
Conclusion

Our federal regulations need to be overhauled to unleash our country's economy. Natural gas and hydropower are ready to power our idle mills. I appreciate the work that this Committee is doing to bring rationality to the federal permitting process. I encourage the Committee to adopt these modest bills and to continue the work to accelerate the energy infrastructure projects that can bring additional prosperity to Maine and the rest of the country. Congress needs to take back our country from the overzealous activists that are taking advantage of the bureaucracy and tying our country up into knots.

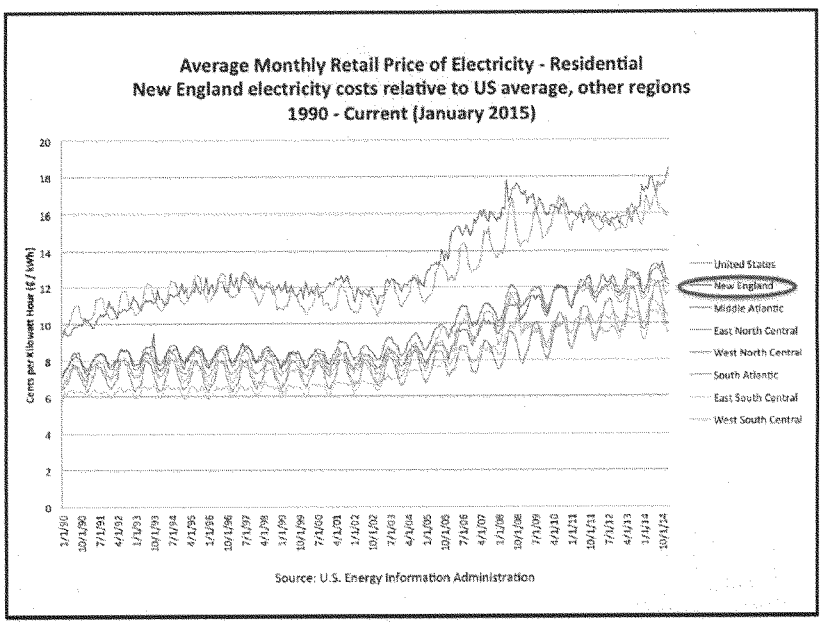
I thank the Chair and Ranking Member and welcome your questions.

Appendix

Natural gas and Electricity Prices in New England – Source ISO-New England



New England versus rest of the country – Retail Electrical Costs – Source New England States Cooperative on Electricity



Mr. WHITFIELD. And, Governor, thank you very much for that statement.

And at this time, Ms. Miles, you are recognized for 5 minutes for your opening statement.

STATEMENT OF ANN F. MILES

Ms. MILES. Thank you. Chairman Whitfield, Ranking Member Rush, and members of the subcommittee, my name is Ann Miles and I am the Director of the Office of Energy Projects at the Federal Energy Regulatory Commission.

The commission is responsible for siting infrastructure for non-federal hydropower projects, interstate natural gas pipelines and storage facilities, and liquefied natural gas terminals. I appreciate the opportunity to appear before you to comment on the discussion drafts.

As a member of the commission's staff, the views I express in this testimony are my own, and not those of the commission or any individual commissioner.

I will first comment on the discussion draft addressing hydropower. It has the important goals of improving transparency, accountability, and timely decision-making. Because the hydro draft is extensive, I will only highlight a few sections in my oral testimony. In Section 1302 of the draft, which adds a new Section 34 to the Federal Power Act, or FPA, I support the development of procedures to lower the time, effort, and expense needed to develop hydropower projects at existing non-powered dams. However, it is not always the case that a small capacity project has only minor environmental impacts. Therefore, removing federal jurisdiction for qualifying facilities that are 5 megawatts or less could result in unintended consequences for environmental resources. I am also concerned about some of the specifics of the proposed new FPA Section 34, including, for example, the extent to which it could be read as elevating economic and operational concerns over other public interest considerations. In Section 1303, I do not support the amendment to Section 33 of the FPA to require the commission, rather than the secretaries, to determine whether a licensed applicant's alternative condition under Section 4(e) or Section 18 of the FPA would protect the federal agency's reservation. Further, shifting oversight of the trial-type hearings required in the new Section 35 to the commission would not eliminate the substantial expense and time associated with such hearings, as I understand is the current situation. Instead, Congress may wish to consider eliminating them entirely, and allowing the commission to address disputes on the material facts of the proceeding earlier in the commission's licensing process. Finally, in Section 1304, I am supportive of the intent of the amendments to Section 308 and the new Section 313 to bring certainty and timeliness to the hydro-licensing process. However, without a method to enforce any established schedule, the goals may not be achieved.

I will now turn to comments on FERC process coordination under the Natural Gas Act, or NGA, which has the commendable goal of improving transparency and predictability for federal and state permitting agency actions by adding more coordination, reporting, issue resolution, and accountability. The Energy Policy Act of 2005

provided additional authorities and responsibilities to the commission in Section 15. The proposed legislation includes existing practices the commission added to its regulations in response to EPAct 2005. However, the proposed changes would move some of the activities to later in the process than is the case under current commission practice; thus, lessening efficiency.

There are two aspects of the draft that bear particular attention. First, in Section 15(c)(6), if an agency does not meet the 90 day or otherwise approved schedule, the federal agency head must notify Congress, which would provide some accountability. Second, in Section 15(e), I see value in requiring the commission to make available on its Web site the schedule established with other federal agencies, and the status of federal authorizations, because that information is now scattered in various filings. Overall, the current process for siting natural gas facilities is timely and efficient, and results in fair, thorough, and legally defensible documents. I am concerned that codifying the commission's practices too rigidly might have the unintended consequence of limiting the commission's ability to respond to the circumstances of specific cases, to changes in the natural gas industry, and to the nation's energy needs.

Finally, commission staff would be happy to provide technical assistance, and to work with other stakeholders to help refine both the hydropower and gas discussion drafts.

This concludes my remarks. I would be pleased to answer any questions you may have.

[The prepared statement of Ms. Miles follows:]

Testimony of

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Committee on Energy and Commerce
Subcommittee on Energy and Power
United States House of Representatives

Hearing on Discussion Drafts Addressing Hydropower Regulatory Modernization and FERC Process Coordination under the Natural Gas Act

May 13, 2015

Chairman Whitfield, Ranking Member Rush, and Members of the Subcommittee:

My name is Ann Miles and I am the Director of the Office of Energy Projects at the Federal Energy Regulatory Commission (Commission or FERC). The Office is responsible for siting infrastructure projects including: (1) licensing, administration, and safety of non-federal hydropower projects; (2) authorization of interstate natural gas pipelines and storage facilities; and (3) authorization and safety of liquefied natural gas terminals.

I appreciate the opportunity to appear before you to first comment on the discussion draft addressing hydropower regulatory modernization and then comment on the discussion draft addressing FERC process coordination under the Natural Gas Act. As a member of the Commission's staff, the views I express in this testimony are my own, and not those of the Commission or of any individual Commissioner.

HYDROPOWER REGULATORY MODERNIZATION

I. Background

The Commission regulates over 1,600 hydropower projects at over 2,500 dams pursuant to Part I of the Federal Power Act (FPA). Together, these projects represent 55.5 gigawatts of hydropower capacity, which is more than half of all the hydropower

capacity in the United States. Hydropower is an essential part of the Nation's energy mix and offers the benefits of an emission-free, renewable, domestic energy source. Public and private hydropower capacity together total about nine percent of U.S. electric generation capacity.

Under the FPA, non-federal hydropower projects must be licensed by the Commission if they: (1) are located on a navigable waterway; (2) occupy federal land; (3) use surplus water from a federal dam; or (4) are located on non-navigable waters over which Congress has jurisdiction under the Commerce Clause, involve post-1935 construction, and affect interstate or foreign commerce.

The FPA authorizes the Commission to issue licenses for projects within its jurisdiction, and exemptions for projects that would be located at existing dams or within conduits as long as these projects meet specific criteria. Licenses are generally issued for terms of between 30 and 50 years, and are renewable. Exemptions are perpetual, and thus do not need to be renewed.

Congress has established two types of exemptions. First, section 30 of the FPA allows the Commission to issue exemptions for projects that use, for generation, the hydroelectric potential of manmade conduits that are operated for the distribution of water for agricultural, municipal, or industrial consumption, and not primarily for the generation of electricity. Conduit projects can have a maximum capacity of 40

megawatts and are not subject to the Commission's National Environmental Policy Act of 1969 (NEPA) review. Second, in section 405(d) of the Public Utility Regulatory Policies Act as amended by the Hydropower Regulatory Efficiency Act of 2013, Congress authorized the Commission to grant exemptions for small hydroelectric power projects having an installed capacity of up to 10 megawatts. To qualify for this type of exemption, a project must be located at an existing dam that does not require construction or the enlargement of an impoundment, or must use the hydropower potential of a natural water feature, such as a waterfall. Both types of exemptions are subject to mandatory fish and wildlife conditions provided by federal and state resource agencies.

Under the provisions of the Hydropower Regulatory Efficiency Act of 2013, a qualifying conduit facility does not need a license or exemption from the Commission if the facility meets the following requirements: (1) the conduit on which the facility is located operates for the distribution of water for agricultural, municipal, or industrial consumption, and not primarily for the generation of electricity; (2) the facility generates electric power using only the hydroelectric potential of the conduit; (3) the facility has an installed capacity that does not exceed 5 megawatts; and (4) the facility was not licensed or exempted from the licensing requirements of Part I of the FPA on or before the date of enactment of the 2013 Act. To date, 39 projects have qualified under these provisions.

The Commission has established three licensing processes, and allows applicants to request the process best suited to individual proceedings. The integrated licensing

process (ILP) frontloads issue identification, collaboration among stakeholders, and decisions on information needs to the period before an application is filed, and is thus well-suited to complex cases. The alternative licensing process (ALP) allows participants significant flexibility in tailoring the licensing process in a manner that can work well in individual cases. The traditional licensing process (TLP) appears to work best for less controversial projects, and is the process used for exemptions. In addition, Commission staff has developed a pilot licensing process for marine and hydrokinetic projects in which, with the assistance of federal and state resource agencies, a project can be licensed in as little as six months. The Hydropower Regulatory Efficiency Act of 2013 also asked the Commission to investigate the feasibility of a two-year licensing process from the beginning of pre-filing to Commission action on the license application. Only two applications were filed for this program and only one qualified, which was an application for the 5-megawatt Kentucky River Lock and Dam No. 11 Project. The two-year process for the project began in May 2014, and currently Commission staff is reviewing a license application filed for the project in April 2015.

The Commission's hydropower processes give stakeholders the opportunity to participate in collaborative, transparent public processes, where all significant issues are identified and studied. Commission staff develops a detailed, thorough environmental analysis that helps interested entities to understand matters of concern to them and gives them numerous opportunities to provide the Commission with information, comment, and recommendations. While the Commission's regulations establish clear procedures,

Commission staff retains the ability to waive the regulations or to revise the procedures where doing so will lead to a more efficient and cost-effective processing of an application.

It is important to note that in many instances, it is applicants, federal and state agencies, and other stakeholders that determine project success, and control whether the regulatory process will be short or long, simple or complex. For example, where a developer picks a site that raises few environmental issues or works early to build a rapport with stakeholders, and where agencies and other stakeholders commit to fully and timely engage in the regulatory process, project review can move very quickly. In these instances, licenses can be issued in two years or less.

I note that the location of a proposed project and its mode of operation may be at least as significant as project size: a small project that alters the natural flow of a river in a sensitive area may be harder to license than a larger, run-of-river project on a site where there are few environmental issues.

In making licensing decisions, sections 4(e) and 10(a) of the FPA require the Commission to consider and balance many competing developmental and environmental interests. In addition, statutory requirements give other agencies a significant role in licensing cases, thus limiting the Commission's control of the cost, timing, and efficiency of licensing. For example, section 4(e) of the FPA authorizes federal land-administering

agencies to provide mandatory conditions for projects located on federal reservations under their jurisdiction. Further, section 18 of the FPA gives authority to the Secretaries of the Departments of the Interior and Commerce to prescribe fishways. For exemptions, section 30(c) of the FPA allows federal and state agencies to impose conditions to protect fish and wildlife resources. Further, section 401(a)(1) of the Clean Water Act precludes the Commission from licensing a hydroelectric project unless the project has first obtained state water quality certification, or a waiver thereof.

The Commission also must ensure compliance with other statutes, each containing its own procedural and substantive requirements, including: the Coastal Zone Management Act, the Endangered Species Act, the Wild and Scenic Rivers Act, and the National Historic Preservation Act.

Compliance with these requirements can involve a variety of processes ancillary to licensing, which can lengthen the time required to obtain a license and adversely affect the economic viability of a project. Even after the Commission staff has completed analysis of a hydroelectric project and is ready to take final action on the application, the case may be delayed, sometimes for years, until the issuance of a water quality certification under the Clean Water Act, or a biological opinion pursuant to the Endangered Species Act. About one-third of all pending hydropower applications before the Commission are awaiting these other agencies' approvals. Further, these mandatory conditions, which the Commission sometimes finds do not meet the Commission's

comprehensive development standard but which the Commission is required by law to include in a license or exemption, may result in increased costs or reduced power production.

In addition to licensing and relicensing projects, and issuing exemptions, the Commission is also responsible for ensuring compliance with license and exemption conditions during the life of regulated projects, and maintains a strong, effective program of inspecting jurisdictional dams to ensure that human life and property are kept safe.

II. Project Relicensing and License Administration Workload Through FY 2030

Commission staff currently has a full workload processing original license, relicense, and exemption applications, as well as its compliance and dam safety work. The number of projects that will begin the relicensing process will substantially increase beginning in FY 2016 and continuing well into the 2030s. Between FY 2016 and FY 2030, over 500 projects, which represent about 50 percent of our licensed projects and about 30 percent of license capacity under Commission jurisdiction, will begin the pre-filing consultation stages of the relicensing process. Once new licenses are issued, the license implementation phase begins. Currently, the Commission's license compliance and administration division is processing over 3,500 license-related filings per year. This will substantially increase commensurate with the increased relicensing workload.

Many of these projects now on the eve of relicensing were first licensed in the early to mid-1980s, prior to enactment of modern environmental standards, including those of the Electric Consumers Protection Act of 1986, which first directed the Commission, when issuing licenses, to give equal consideration to energy conservation, fish and wildlife protection, recreational opportunities, and environmental quality, and required that licenses be granted upon the condition that the project adopted shall, in the judgment of the Commission, be the one best adapted to a comprehensive plan encompassing fish and wildlife protection, irrigation, flood control, and water supply.

While the Commission staff is dedicated to making the regulatory process as timely and cost-effective as possible, especially in consideration of the number of projects that will be undergoing the relicensing process for the first time, I am concerned that adding additional complexity and required procedures to the Commission's review could hinder our ability to timely process this large workload.

III. Specific Comments on the Discussion Draft

The discussion draft addressing Hydropower Regulatory Modernization has the commendable goals of improving administrative efficiency and transparency; promoting new hydropower infrastructure, accountability, and efficient and timely decision-making; requiring balanced decision-making; and reducing duplicative oversight. Shared decision-making in the licensing and exemption of hydroelectric projects has oftentimes

complicated our efforts to timely and efficiently process license and exemption applications. Therefore, I support efforts to streamline the license and exemption processes. I will now offer comments on specific sections of this discussion draft.

A. Discussion Draft Section 1301. Administrative Efficiency and Transparency

1. Proposed FPA Section 4(h)

The discussion draft would add to the FPA a new section 4(h), which would give the Commission the exclusive authority to administer the terms and conditions of a license, including all mandatory terms, conditions, and prescriptions submitted by federal and state resource agencies. I support the notion of the Commission's exclusive enforcement authority, which I believe already exists. However, to the extent that the proposed section provides that only the Commission can amend terms, conditions, prescriptions, and certifications, it raises the question of whether agencies that issue mandatory conditions can exercise authority that they have reserved, to add to or revise those conditions. Congress may want to clarify its intent in this regard.

2. Proposed FPA Section 4(i)

The discussion draft would add to the FPA a new section 4(i), requiring any Commission determination on the need for studies or additional information to include an explanation as to why existing information is inadequate.

New FPA section 4(i) is largely redundant with existing Commission regulations and other sections of the FPA. For example, current Commission regulations require Commission staff and other stakeholders to, among other things, describe existing information and the need for additional information; explain the nexus between project effects, the resource to be studied, and how the study would inform the development of license requirements; and consider level of effort and cost, and why any alternative studies would not be sufficient to meet the stated information needs.

Commission staff makes every effort to require only those studies that are necessary for the Commission to obtain an understanding of a project sufficient to carry out its responsibilities under the FPA and NEPA. Further, the regulations encourage the gathering and use of existing information and give applicants and other parties the ability to engage in dispute resolution and to challenge study plans approved by Commission staff. Accordingly, I am uncertain that the proposed new section is necessary.

3. Proposed FPA Section 4(j)

The discussion draft would add a new section 4(j) of the FPA, limiting the Commission's control of project shorelines and requiring at least some degree of deference to state and local law.

By way of background, where competing uses of project lands and waters arise, a licensee may either on its own initiative, or as required by the Commission, develop a

comprehensive shoreline management plan to manage the multiple resources and uses of a project reservoir's shorelines in a manner that is consistent with license requirements and project purposes, while addressing the needs of the general public. These plans are prepared by licensees in cooperation with local stakeholders, and submitted to the Commission for approval. Shoreline Management Plans govern only those lands in which licensees have a legal property interest.

Shoreline management plans address issues such as which licensee-owned lands should be reserved for various purposes such as recreation, environmental protection, and residential and commercial development, and what structures, such as piers, boat docks, and patios, may be constructed on licensee-owned shoreline lands or on lands that licensees control. Thus, for example, a plan may prohibit a licensee from authorizing construction on its property of a marina that blocks access to part of a lake or would make boating or swimming unsafe.

It is important to understand that, in enacting the FPA, Congress established a regime in which licensees and exemptees, in exchange for the use of waters belonging to the people of the United States, are required to satisfy the public interest in matters such as hydroelectric generation, recreation, irrigation, water supply, flood control, and environmental protection. Thus, the Commission must consider such issues as whether upstream or downstream residents may be flooded as a result of project operations or whether visitors to a lake have sufficient public access to boat, fish, hike, or swim.

Congress determined that these matters sometimes are more than a local concern, and thus should be resolved by an entity that is required to consider the overall public interest. Therefore, I am concerned that proposed FPA section 4(j) could subordinate the general public interest to a more narrow range of considerations. In addition, as I understand this section, it would require the Commission staff to identify all state and local laws and regulations related to project shorelines and other lands. This will be time consuming and challenging across the fifty states.

B. Discussion Draft Section 1302. Promoting New Hydropower Infrastructure

Discussion draft section 1302 would establish various procedures to promote hydropower development at existing, non-powered dams. This goal is consistent with Commission policy and has been a major focus of Commission staff's effort in the last few years.

Discussion draft section 1302 would add new FPA section 34 to establish a procedure whereby hydropower projects with an installed capacity of 5 megawatts or less would not be required to be licensed, provided the applicant makes a showing that the project meets certain qualifying criteria, including that the qualifying facility be associated with an existing, non-powered dam; be constructed, operated, and maintained to generate electricity; and result in no material change to the water storage and release regime at the non-powered dam. For facilities that otherwise meet the qualifying criteria

but have an installed capacity greater than 5 megawatts, new FPA section 34 would also allow the Commission to issue exemptions after first consulting with federal and state fish and wildlife agencies and conducting an environmental review where full consideration is given to any recommendations for exemption terms and conditions provided by these agencies. Commission jurisdiction over the exempted qualifying facility would only extend to the qualifying facility, and not associated dams, impoundments, transmission lines, or other lands.

I support the intent of these provisions, which would serve to lower the time, effort, and expense needed to develop hydropower projects at existing, non-powered dams. However, as I explained, the small capacity of a proposed project does not necessarily mean that the project has only minor environmental impacts, as projects of this type can still adversely affect water quality, cause fish mortality by turbine strike, and displace terrestrial habitat. Therefore, removing federal jurisdiction for qualifying facilities that are 5 megawatts or less could result in unintended consequences for environmental resources, including federally listed threatened and endangered species.

I am also concerned about some of the specifics of the proposed new FPA section 34, including for example: the extent to which it could be read as elevating economic and operational concerns over other public interest considerations; the proviso that appears to restrict the Commission's determination of what type of environmental document is appropriate in a given case; whether the Commission's jurisdiction would be

essentially limited to project powerhouses, to the exclusion of other project works associated with the development of that powerhouse such as conduits or transmission lines; and the prohibition of altering flow regimes, when doing so might be necessary for project or public safety, flood control, recreation, environmental protection, or other public interest purposes.

Finally, it may be worth considering whether projects at federal dams warrant different treatment from those at non-federal dams. Commission staff has seen increased interest over the last 10 years in developing hydropower facilities at existing, non-powered federal dams. To install hydropower at a federal dam, a developer is required to obtain both a license from the Commission and other approvals from the federal entity to use its dam, resulting in duplicative review and oversight. While the draft legislation would address this issue at federal dams for qualifying projects that are 5 megawatts or less by removing the need to obtain a Commission license, it would not eliminate duplicative oversight at federal dams for projects greater than 5 megawatts. Because federal dam-owners may be best suited to authorize projects at their facilities without a need for duplicate regulation, Congress may wish to consider amending the FPA to give the agencies that own federal dams the exclusive authority to regulate non-federal hydropower development at those dams, regardless of size.

C. Discussion Draft Section 1303. Promoting Accountability, Requiring Balanced and Efficient Decision-Making, and Reducing Duplicative Oversight

1. Adequacy of Mandatory Conditions

With respect to FPA section 4(e) conditions submitted by a federal lands department Secretary and FPA section 18 fishway prescriptions submitted by either the Secretary of the Interior or Commerce, discussion draft section 1303 would amend section 33 of the FPA to require the Commission, rather than the Secretaries, to determine whether a license applicant's alternative FPA section 4(e) condition or section 18 fishway prescription would adequately protect a reservation from project effects, or would provide fish passage in a manner that would be no less protective than the initial prescription, but at a lesser cost or with improved electricity generation. It would be a significant change if the Commission, rather than the land-managing agencies, were to decide if conditions imposed by those agencies adequately protected reservations. I do not support this change. However, the Commission staff, in the course of its NEPA review, regularly assesses the adequacy of all environmental measures proposed, recommended, or required for project lands and waters. This assessment includes consideration of the effects of the measure, and alternatives to it, on project costs and generation. This analysis is available to the conditioning agencies in making their decision on alternative conditions.

2. Trial-Type Hearings

Discussion draft section 1303 would amend section 18 of the FPA and add a new section 35 to the FPA which together would shift responsibility for holding trial-type hearings on any disputed issue of material fact with respect to an applicable FPA section 4(e) condition or section 18 fishway prescription, from the Secretaries of the Interior, Agriculture, and Commerce, to the Commission. Licensing stakeholders, including licensees, have informed us that trial-type hearings under the FPA in its current form have not been commonly used because participating in such hearings requires substantial time, money, and staff resources. Parties have instead chosen to forego the hearings in favor of negotiating alternative terms, conditions, or prescriptions. Shifting oversight of these trial-type hearings to the Commission would, in our view, not eliminate the substantial expense associated with such hearings, but instead could encourage the proliferation of these hearings, thereby creating a substantial additional workload for the Commission, which could cause licensing delays and increased administration costs. Instead of moving the trial-type hearings to the Commission, Congress may wish to consider eliminating them entirely from the FPA, and allow the Commission to address disputes on the material facts of a proceeding as part of the Commission's licensing decision, as it has historically done through dispute resolution processes laid out in the Commission's regulations, through use of the Commission's Dispute Resolution Service, or through existing hearing opportunities.

3. Amendment of FPA Sections 4(e) and 18

Discussion draft section 1303 would amend section 4(e) of the FPA to prohibit conditions submitted by a department Secretary from imposing a requirement that impairs project operations, management, or utilization of lands or resources outside such portion of a reservation occupied by a hydroelectric project, and amend section 18 of the FPA to specifically require that fishways prescribed by the Secretary of the Interior or Commerce be necessary to mitigate project effects on fish populations.

The amendment to FPA section 4(e) would focus mandatory license conditions on only those resources over which the applicable Secretaries have management and administrative authority, eliminating the potential for overreach and duplicative oversight, which I support. However, Congress may wish to consider clarifying the text by focusing the mandatory license conditions on only those project works located on the federal reservation.

The amendment to FPA section 18 limits prescribed fishways to only those necessary to mitigate project effects on fish populations. Because I am not certain as to the intent of the proposed revision, I have no further comment on it.

D. Discussion Draft Section 1304. Promoting Efficient and Timely Decision-Making

Section 1304 of the discussion draft would amend section 308 of the FPA to establish the Commission as the lead agency for purposes of: (1) coordinating all applicable federal authorizations; and (2) complying with NEPA, and any environmental review under state law associated with a hydroelectric project proposed for licensing or exemption under part I of the FPA. It would also: (1) require all other federal and state agencies considering an aspect of an application for federal authorization to cooperate with the Commission and comply with deadlines established by the Commission; (2) provide the Commission with the authority to establish schedules for the federal authorizations; (3) require the Commission-established schedules to be in compliance with applicable schedules established by federal law; and (4) require the Commission to ensure the expeditious completion of all federal authorizations.

Discussion draft section 1304 would add a new part (d) to section 313 of the FPA, which would deem the failure of an agency to comply with the Commission's schedule inconsistent with federal law. The new part (d) would also establish the U.S. Court of Appeals for the District of Columbia Circuit or the U.S. court of appeals for any circuit wherein the licensee or applicant has its principal place of business, as the exclusive jurisdictional authority for any civil action on review of the failure of an agency, other

than the Commission, to comply with the Commission's schedule, or on review of an agency's decision on the requested federal authorization.

I agree with the goals of this section to bring certainty and timeliness to the licensing process. Federal authorizations that most commonly delay the Commission's ability to make a licensing decision in a timely manner are Clean Water Act water quality certifications and Biological Opinions under the Endangered Species Act. Both the Clean Water Act and Endangered Species Act already have established timelines for completion that the Commission would have to incorporate into its schedule. These timelines can be indirectly extended by actions of both the federal authorizing agency and the applicant, such as having an applicant for the federal authorization withdraw and refile its request for the purpose of resetting the clock or having the federal agency delay the start of the clock by stating that existing information is inadequate for it to make its decision. Section 1304, in our view, would not eliminate these problems. Further, it does not give the Commission the authority to enforce the schedule that it establishes. Congress may wish to consider measures to ensure enforceability such as authorizing the Commission to consider mandatory conditions that are not received in accordance with the Commission's schedule as recommendations, allowing the Commission to move forward with licensing without an agency condition where it is late, or making action on infrastructure siting a priority in these agencies' statutes. This would provide an incentive to act timely.

V. Conclusion

There is a great deal of potential for the development of hydropower projects at existing, non-powered dams throughout the country. Working within the authority given it by Congress, the Commission continues to adapt its existing, flexible procedures to facilitate the review and, where appropriate, the approval of such projects. With the projected increase in our relicensing workload, we are interested in continuing to explore ways to expedite the completion of all federal authorizations and eliminate or reduce duplicative oversight. Commission staff remains committed to exploring with project developers; its sister federal agencies; Indian tribes; state and local governments; and other stakeholders, every avenue for the responsible and efficient development of our nation's hydropower potential.

This concludes my remarks on the hydropower discussion draft. I will next provide comments on the Natural Gas Act discussion draft.

FERC PROCESS COORDINATION UNDER THE NATRUAL GAS ACT

I. Background

The Commission is responsible under section 7 of the Natural Gas Act (NGA) for authorizing the construction and operation of interstate natural gas pipeline and storage

projects, and under section 3 of the NGA for the construction and operation of facilities necessary to permit either the import or export of natural gas by pipeline, or by sea as liquefied natural gas (LNG). As part of those responsibilities, the Commission conducts both a non-environmental and an environmental review of the proposed facilities. The non-environmental review focuses on the engineering design, and rate and tariff considerations. The environmental review, pursuant to the NEPA, is carried out with the cooperation of numerous federal, state and local agencies; Indian tribes; and with the input of other interested parties. Since 2005, the Commission has authorized nearly 10,500 miles of interstate natural gas transmission pipeline; more than one trillion cubic feet of interstate storage capacity; and 24 LNG facility sites.

The Energy Policy Act of 2005 (EPAct 2005) amended several sections of the NGA to provide additional authorities and responsibilities to the Commission related to natural gas facilities. In particular, EPAct 2005 states that the Commission is the lead federal agency for coordinating all applicable federal authorizations and for the purpose of NEPA compliance. As the designated lead agency, the Commission sets the schedule for all federal authorizations, coordinates the regulatory review among federal agencies, and maintains a single, consolidated federal record for any subsequent appeals or judicial reviews. To streamline the permitting process, FERC establishes a publicly-noticed schedule for all decisions or actions taken by other federal agencies and/or state agencies delegated with federal authorizations. This includes federal authorizations issued by both federal and state agencies under the Endangered Species Act, National Historic

Preservation Act, Clean Water Act, Clean Air Act, Coastal Zone Management Act, and other statutes.

The Commission has a well-defined and transparent process for reviewing natural gas facilities under the jurisdiction of sections 3 and 7 of the NGA. The phases include:

- Project Preparation: the project sponsor defines customers and a proposed project before formally engaging with FERC;
- Pre-filing Review (required for LNG terminals but voluntary for natural gas pipelines): FERC staff begins working on the environmental review and engages with stakeholders with the goal of identifying and resolving issues before the application is filed;
- Application Review: the project sponsor files an application with FERC under NGA section 7 for interstate pipeline and storage facilities and under NGA section 3 for import or export facilities. FERC staff completes and issues the environmental document, and analyzes the non-environmental aspects of projects related to the public interest determination; and
- Post-Authorization Compliance: FERC staff works with the project sponsor and stakeholders to ensure compliance with any conditions to FERC approval, including inspections during construction of pipelines and LNG facilities. To ensure continued compliance with the conditions of Commission orders for LNG facilities, Commission staff also inspects these facilities at least biennially for as long as they are in operation. Unlike hydropower projects,

> where the Commission has the responsibility to inspect and ensure the facility and public safety of projects throughout their license terms, the Department of Transportation has jurisdiction to establish pipeline and LNG facility safety regulations, and to inspect constructed, operating facilities on an ongoing basis. During construction and operation of the facilities, the Department of Transportation performs inspections to enforce its safety regulations on the design, installation, construction, inspection, testing, operation, and maintenance of pipeline and LNG facilities.

The Commission is committed to making the regulatory process as short as possible, while also providing public notice and opportunity for comments before acting; explaining the reasons for the Commission's decision; and authorizing only those projects that are determined to be in the public interest. Under current authorities, the Commission is able to determine which pipeline projects must employ Pre-filing Review and which do not need this phase. Through early collaboration and by tailoring the process to address project-specific circumstances, the Commission since EPAct 2005, has been able to act on 92% of natural gas project applications in less than one year after the application is filed.

II. Specific Comments on the Discussion Draft

The discussion draft addressing FERC Process Coordination under the Natural Gas Act has the commendable goals of improving transparency and predictability for federal and state permitting agency actions by adding more coordination, reporting, issue resolution, and accountability to section 15 of the NGA. Commission staff is committed to the timely review of proposed interstate natural gas facilities. The Commission's current review process is thorough, efficient, and has resulted in substantial additions to the nation's natural gas infrastructure. These results have been facilitated by a thorough environmental analysis under NEPA, which I believe has been improved through the Commission's Pre-filing Review process.

The proposed legislation would alter the NGA to include several existing practices the Commission has used to successfully review projects: outreach to permitting agencies to ensure participation in the development of the NEPA document; early identification and resolution of issues; the use of third-party contractors in assisting Commission staff with application review; and disclosure of the status of any pending permits. The proposed changes to the NGA would formalize the informal process that Commission staff has found to be effective. However, the proposed changes would move some activities to later in the process than is the case under current Commission practice, thus lessening efficiency. This would limit the Commission's flexibility to adapt its process to the unique circumstances of each project. In addition, the proposed NGA

modifications would alter the Commission's role from one of collaboration with its sister agencies to an enforcement role overseeing and monitoring other agency execution of their Congressionally-mandated duties. I am concerned that this will require the use of Commission resources that could better be spent analyzing proposed projects and could lead to unproductive tension between the agencies involved in the review process. I will now offer comments on the specific sections of the discussion draft.

A. Section 15(b)

The proposed changes to NGA section 15(b) would require the Commission to identify all agencies and Indian tribes with federal authorization responsibilities after the federal authorizations were requested by the project sponsor. After receipt of an application, the Commission would be responsible for establishing a specific deadline by which all permitting agencies would agree to participate in the NEPA review process.

Currently, the Commission's regulations require that each project applicant perform outreach to relevant agencies during the Project Preparation phase and well before any application is made. This outreach ensures that agencies with responsibility for permits, opinions, or other approvals required under federal law are aware of the proposed project at the earliest possible time, while also requiring the project sponsor to account for the various application processes in developing the project schedule. Once the Commission initiates Pre-filing Review, staff begins more formal coordination with

such agencies and invites them to participate in the NEPA review process. This allows those agencies to have input into the development of the project and identification of potential project issues when their advice is most valuable. Accordingly, I recommend that any statutory revision concerning the engagement of cooperating agencies require that engagement begin before the filing of applications for federal authorizations.

B. Section 15(c)

The proposed changes to NGA section 15(c)(2) would not alter the current authorities and responsibilities of the Commission as the lead federal agency for coordinating all applicable federal authorizations and for the purpose of NEPA compliance. Staff's experience has shown that agencies can have different timing requirements for the information needed for their decisions, which results in differing review periods. Information that an agency considers vital to its determination may not be available until after the FERC environmental review is complete and the Commission has issued an order. Providing agencies with timely and complete information necessary to perform Congressionally-mandated project reviews is the single most crucial step in ensuring process accountability and efficiency. This is the responsibility of the project sponsor and is often outside of the control of permitting agencies. I recommend that any statutory revision setting a deadline for the issuance of federal permits include as a predicate the timely provision of all necessary information by the project sponsor.

The proposed text of NGA section 15(c)(3) and (4) would require permitting agencies to coordinate their review with the FERC's NEPA review and to give deference to the Commission's opinion on what matters need to be addressed for that agency's permit review. Coordination for NEPA review already occurs during the Commission's Pre-filing Review, where staff engages other permitting agencies before an application has been filed to discuss what issues need to be included in the Commission's environmental review. Our process provides this mechanism for early and effective coordination among Commission staff and agencies with jurisdiction or special expertise. We invite these agencies to formally cooperate with us in the preparation of the NEPA document, building on the relationships and groundwork established during Pre-filing Review. To the extent possible, staff constructs the NEPA document so that it can be adopted by all cooperating agencies. During this coordination, Commission staff gives deference to these agencies' opinion of the scope of environmental review needed to satisfy their NEPA obligations, as they are best equipped to determine what information satisfies their statutory mandates. I am not certain that the proposed statutory language is needed to improve current practice.

The proposed text of NGA section 15 (c)(4) and (6) would require agencies to formulate and implement administrative, policy, and procedural mechanisms to enable agencies to complete permit processing within 90 days after issuance of the Commission's final environmental document. In addition, if the agency is unable to meet the schedule, it must report to Congress and set forth an implementation plan to ensure

completion. Having to report to Congress on an agency's failure to meet the schedule and provide an implementation plan would provide some accountability; however it could also have the unintended consequence of agencies providing stricter permitting conditions than would have been the case had they had more time. Further, it is not clear what value would be gained by also requiring that this information be provided to the Commission, as the Commission will not be in a position to review or alter the agency plans.

The proposed text of NGA section 15(c)(5) would establish a process for the early identification and resolution of issues associated with an agency's permit review. However, this proposal places this step during Application Review, after an application has been filed with the Commission and all other relevant agencies. The Commission's current approach encourages involvement by all federal or state agencies, local governments, or Indian tribes much earlier, as the project is being developed and throughout Pre-filing Review. This is the period in which agencies can provide the greatest assistance to the project sponsor in designing a successful project and in addressing issues that may delay or prevent federal authorization. If Congress chooses to codify Commission practice, I recommend requiring coordination during the Pre-filing Review phase as is current Commission practice for large, complex projects.

Proposed NGA section 15(c)(5) would also establish a formal process with timelines for the resolution of disputes between the permitting agencies and the project

sponsor. As I understand the bill, this process could only be used during Application Review, once applications had been filed with the Commission and all other relevant agencies. Again, the Commission's current approach already provides for cooperative resolution of issues though engagement by all parties during the earlier Project Preparation and Pre-filing Review phases. In the initial stages of project development, well before applications are made, both the project sponsor and permitting agencies discuss any issues that would result in delay or denial of federal authorization. Once the Pre-filing Review process begins, Commission staff facilitates these discussions and involves agency regional or headquarter senior staff as necessary to find solutions. However, the proposed changes would alter the voluntary, collaborative process by imposing a structure and timetable that would likely make the process adversarial. As with the coordination step, I recommend that any statutory revision governing an issue resolution meeting begin during the pre-application phase, in order to promote timely processing of applications.

C. Section 15(d)

Revised NGA section 15(d) would allow an applicant to fund third-party contractors or Commission staff to assist the Commission in reviewing the application. This practice is already a feature of Pre-filing and Application Review. For projects wishing to use a third-party contractor, Commission regulations require project sponsors to provide at least three third-party contractors from which Commission staff may make a

selection. Commission staff has complete authority over the scope and level of involvement of the third-party contractor, which works solely under the direction of Commission staff. There is no need to provide for the funding of Commission staff, given that the Commission is already required by law to recover all of its costs through fees assessed to regulated entities. Thus, I do not find the proposed revision necessary for the Commission's review process.

D. Section 15(e)

As revised, NGA section 15(e) would require, in instances where there are multiple federal authorizations needed, the Commission make available on its website the schedule established by the Commission and the status of the federal authorizations. As previously discussed, the Commission already notifies federal, and state agencies acting pursuant to delegated federal authority, of the date their action is due in its public Notice of Schedule. Similarly, the project sponsor is already required to disclose the status of any needed federal permits. Specifically, the Commission's regulations require all applications to include: each federal authorization the project will require; the agency responsible for that authorization; and the requested issuance date of that authorization. In addition, the Commission's regulations require the project sponsor to indicate the date it submitted the federal authorization request. In cases where the permit request has not been made, the project sponsor must provide an explanation for the delay and provide a date by which it intends to make the required submission. If a project is approved, the

applicant must again provide updates to the Commission on the status of both applications for and receipt of federal authorizations. Because this information is scattered now, I see value in having the Commission create a website that would have the information in one location; however, it will require time to create and maintain, which may divert resources away from application processing.

III. Conclusion

The current siting process for natural gas facilities has resulted in a significant increase in the natural gas infrastructure in the United States, meeting the Nation's energy needs and answering the concerns of all stakeholders with decisions that are fair, thorough, and legally defensible. In addition, the current review process for natural gas facilities includes public engagement, consultation and cooperation with affected federal and state agencies, Indian tribes, and other stakeholders and a thorough environmental analysis based on information developed during the Pre-filing and Application Review phases. The proposed text would codify existing, successful practices but, in doing so, would move some processes later in the application review, which could have the unintended consequences of lengthening the processing time for natural gas facilities. I am concerned that codifying the Commission's practices too rigidly might have the unintended consequence of limiting the Commission's ability to respond to the circumstances of specific cases, to changes in the natural gas industry, or to the Nation's energy needs.

Commission staff would be happy to provide technical assistance and to work with other stakeholders to help refine both the hydropower and natural gas discussion drafts.

This concludes my remarks. I would be pleased to answer any questions you may have.

Mr. WHITFIELD. Well, thank you, Ms. Miles. And thank both of you once again for coming and giving us your perspective on this discussion draft.

Governor, we have had a lot of hearings, obviously, on energy issues, and one of the recurrent themes that we hear about is that in the Northeast particularly, there are a lot of problems with electricity—adequate electricity supplies. I mean some of the nuclear plants are being closed. And one of the problems is, as you—this Administration particularly, is trying to transform the way energy is being produced in America, going more to renewables, less coal, and so forth, and when you push the country so quickly in one direction, it does create some capacity problems, and I think that is what you were referring to. And is this argument that we hear about the Northeast, that they really do have capacity problems, and the polar vortex, the impact of that, do you think it is a realistic problem or is it just something that is hyped too much?

Governor LEPAGE. Well, let me put it this way. If you own a home in Montreal, a home in a major city, and you don't heat with electricity, an average home will cost you about $34 a month in your electricity bill. If you do that in Maine, it is about $90. If you heat in December, January, and February in Montreal, it will cost you about $100 a month if you are using electricity. In Maine, you have to get a bank loan.

So, sir, it is a capacity issue, and it can be resolved with about a 40-mile transmission line to connect into Quebec Hydro and bring it right into Maine. Quebec Hydro right now has 48,000 megawatts. 48,000 megawatts. Muskrat Falls in Lower Labrador is going to be coming online in a couple of years with another 3,800 megawatts of hydro power. We don't need to build dams up in Maine, although I think the the few dams that are already in place, if you put a generator on, you could generate 70 megawatts. But my point is very simply this, there is plenty of electricity, affordable energy, but we can't get to it.

Mr. WHITFIELD. And so what needs to be done to get to it?

Governor LEPAGE. We need a transmission line in the western part of Maine, about 40 miles to go to the border, and the Canadians are waiting to hook on.

Mr. WHITFIELD. And is that a project that you have been very much involved in, and——

Governor LEPAGE. It is a project that we have been developing. There are three states that are willing—well, two out of three New England states are willing to do transmission at this point is Vermont is willing to transmit power from Canada into New England, and Maine is willing to transport power from Quebec into New England. The problem is getting through the bureaucracy.

Mr. WHITFIELD. And how long have you all been working on this project?

Governor LEPAGE. I am in my fifth year of being governor.

Mr. WHITFIELD. And was it started before you became governor?

Governor LEPAGE. Yes. New Hampshire had started it before I even came in, and that has been at a standstill ever since.

Mr. WHITFIELD. Well, could you be even more specific on precisely what the impediment has been?

Governor LEPAGE. It has been state and federal.

Mr. WHITFIELD. State and federal.

Governor LEPAGE. Yes, state and federal, meaning the State of New Hampshire, they have been working with Hydro Quebec for years and years and years, and frankly, we don't know where it is going.

Mr. WHITFIELD. But——

Governor LEPAGE. I believe that by July or August, the Canadians are going to be looking elsewhere, looking to the other two states, and that is why it is very timely that I be here and say we need your help.

Mr. WHITFIELD. But you and your legal authorities have looked at this draft, and you do support this particular draft——

Governor LEPAGE. Yes.

Mr. WHITFIELD [continuing]. That we have before you?

Governor LEPAGE. Absolutely. We believe that it is very, very important. For instance, there are several projects being proposed to bring natural gas from, let's say, Pennsylvania to Dracut, Massachusetts. We have the infrastructure in the ground in Maine. We have put in several hundred million dollars' worth of pipeline in the roads of Maine, but we have empty pipes because we can't connect to the source. And so we need the resource to come to at least Massachusetts, and four of the New England states are working together to try to make that happen.

Mr. WHITFIELD. Yes. Yes. Well, we are not trying to upset the applecart with this discussion. We have heard from so many different interests that there are some significant problems. And, Ms. Miles, I appreciate your testimony. There are certain parts of this bill that you think are reasonable, and other parts that you are willing to work with us on. But, you know, it is not only FERC but we are talking about the Corps of Engineers, the Department of the Interior, Bureau of Land Management Fish and Wildlife Service, we have all these federal agencies that have a part in this, and if they drag their feet, there is really not a lot that can be done about it. So we look forward to working with you both and others in trying to simply have a more balanced approach to help solve some of these capacity problems that we face.

At this time, recognize the gentleman from Illinois, Mr. Rush, for 5 minutes.

Mr. RUSH. I want to thank you, Mr. Chairman.

Director Miles, are there any instances of a natural gas permitting application being delayed because an applicant has not submitted all of the necessary information, and if so, how would this legislation expedite the process in those cases where agencies are not provided with timely and complete information necessary to perform congressionally mandated project reviews, and what recommendations would you make to help address this particular issue?

Ms. MILES. Congressman Rush, I believe FERC has a very structured, efficient process for addressing natural gas pipeline projects. It consists of the first stage where the applicant will actually investigate whether there is a need in the area to transport gas, and then we encourage all of our applicants with major pipelines to enter into what we call pre-filing. That was established quite a while ago, and we have found some more significant rules around

that came in in 2005. Anyway, during that period of time, we work with all stakeholders who have an interest in the pipeline, we work with all agencies who have responsibilities for issuing permits, and the goal of that pre-filing is to figure out what the issues are and what information is needed for not only FERC staff, but the other agencies to do their environmental reviews of siting such a pipeline. Most applicants are very accommodating and they are interested in providing us with the information that is required in all of our resource reports. If, per chance, we don't have it at the time the application is filed, then we will ask further for it.

Mr. RUSH. How would this legislation impact and expedite the process in those cases where agencies are not provided with timely and complete information which is necessary for you to perform your congressionally directed processes?

Ms. MILES. We are able to move forward with our environmental document. As long as we have the information we need. Should some agencies need something after us, they then will have an opportunity to get that before they issue their permits. As far as the legislation goes, the one thing that seems to be in the gas legislation is that the head of the agency would report to Congress if there is any delay.

Mr. RUSH. Have you had any extraordinary complaints from applicants about the time that it takes you to approve an application?

Ms. MILES. As I said in my testimony, we are issuing the majority of our findings in the natural gas facilities with—about 92 percent within 1 year. There are a few more complex projects that are more contentious, where it may take slightly longer, and we do hear sometimes if it takes a bit longer than that.

Mr. RUSH. Would you characterize the purpose of this hearing is to deal with the 8 percent that is not granted approval? It seems to me that if you granted 92 percent, then maybe we have—in this subcommittee maybe we have finally come up with the problem, and the purpose of this subcommittee is to find out what is happening with the 8 percent that are not approved and—because 92 percent of all the applicants are approved within a timely manner, so maybe we are concerned about the 8 percent, Mr. Chairman.

But, Mr. Chairman, I yield back the balance of my time.

Mr. WHITFIELD. Gentleman yields back.

At this time, recognize the gentleman from Illinois, Mr. Shimkus, for 5 minutes.

Mr. SHIMKUS. Thank you very much.

Governor, welcome. I have been fortunate to be a member of the committee for a long time. And does New England still rely heavily on heating oil—and I think that is part of this debate, isn't it?

Governor LEPAGE. Yes, it is for us. In 2010, when I took office, roughly 80 percent of the homes in Maine were heated with heating oil. We have managed to get it down to about 62 percent this past winter. Most of it has been with heating pumps and pellets. In the rural areas, we can do pellets, heat pumps, that technology works pretty well, but in order to really make a difference, we really need natural gas to get into the infrastructure that we have in our state in order to be able to take the—while we call metropolitan areas or urban areas of Maine, you would call them——

Mr. SHIMKUS. My district.

Governor LEPAGE [continuing]. Very rural.

Mr. SHIMKUS. You would call them my district, so——

Governor LEPAGE. Yes, right.

Mr. SHIMKUS. I represent 33 counties in southern Illinois, the largest community being 33,000 people, but we are connected. Natural gas is our predominant heating ability in fuel. In New England, it is not, and in fact, from my colleagues here, we set up what is it called, a heating oil reserve, because of a crisis years ago, to make sure that there would be heating oil for New England——

Governor LEPAGE. Right.

Mr. SHIMKUS [continuing]. Which now we kind of manage. So I would hope just as a national policy that we would help move natural gas to New England.

Governor LEPAGE. I would certainly encourage Congress to look at this. In 2014, the State of Maine paid a premium of $2 billion—1.3 million people paid a premium of $2 billion because of spikes and the high cost of energy in the winter months. This past winter, while it was a severe winter, we got a break, we only paid a little over $1 billion premium. And Maine is not a wealthy state. The per capita income just broke $41,000. So we are putting an inordinate amount of pressure on Maine families, and we could do so much better.

Mr. SHIMKUS. And I think in New England, there are some small hydro—I am talking about New England as a whole, as a region, and there—I am told there is some concern of the possible inability to relicense some small hydro in New England as a whole, which would increase the challenges, would it not?

Governor LEPAGE. Absolutely. Like I said earlier, we have small dams that if we could put power on them, we could generate 70 megawatts, which doesn't sound like a lot in Washington, but in Maine, that is a lot of power.

Mr. SHIMKUS. Right. Ms. Miles, thank you for your testimony. I was talking to the staff, and we actually employ government employees here many, many times. I don't think I have sat through one that has been so specific and so precise on what you like and what you dislike. So I find that very refreshing, and I appreciate that.

So I want to address one of the ones that you addressed. Your opposition to amending Section 33, I think that is on page 16 of the testimony. And the concern is, we have had Commissioner Moeller here a couple of times, where he specifically stated that what we are trying to address would be very, very helpful, which would seem to be contradictory to what you have stated. He has quoted if Congress chooses to address the situation, changes in various statutes could require that resource agencies meet certain deadlines in their statutory role in reviewing such products. Another approach would be to provide the commission with the authority to rule on whether the conditions that resource agencies submit appropriately balance the benefits and costs that these projects provide. Again, this would require significant change in the various environmental laws for the relevant resources agencies. Can you comment on that?

Ms. MILES. Yes. I think there is a little bit of an innuendo. Shared decision-making is absolutely one of the biggest challenges

for licensing hydropower projects. That is the way Congress established the statutes, and we have worked many years to try to, through regulation and through some statute, get us all working in the same direction and in a timely—obviously, we all would like a very efficient, timely, low-cost process for hydropower.

As I understood the Section 33 change, it was a very specific part that was put into the statute that allowed applicants to come up with an alternative, and then the agencies to address that through trial-type hearings and through alternative conditions. What I am trying to say is, I believe the agencies need to give us what their bottom line condition is that they believe is needed to protect their reservation. That is what their mandate is under their statute. If Congress were to choose to then, once the commission had all those, to say that it is the commission's responsibility to do a more balanced look across those, then I can't speak for Commissioner Moeller, but I think that is a bit of a distinction.

Mr. WHITFIELD. The gentleman's time has expired. At this time, recognize the gentleman from California, Mr. McNerney, for 5 minutes.

Mr. MCNERNEY. Well, thank you, Mr. Chairman. Thank you, Governor and Ms. Miles, for coming and testifying this morning.

You know, I think the intent of the bill sounds good; streamlining permitting so that we have things operating in parallel instead of in series. We want an efficient process, but I am not sure that we are heading down the right path in order to achieve that goal.

Regarding the pipeline question, my estimate is it might actually make things worse. For example, FERC data shows that the average time for filing to approval is under 10 months, and FERC decides 91 percent of certificate applicants within 12 months. So are we actually going to make things better by enacting this kind of rule?

So, Ms. Miles, what, if any, are the potential benefits of simply mandating pre-filing, trying to bring federal agencies to the table sooner on every permit?

Ms. MILES. I believe in most cases, federal agencies are coming to the table early during pre-filing.

Mr. MCNERNEY. Two thirds, approximately.

Ms. MILES. Pardon me?

Mr. MCNERNEY. Two thirds.

Ms. MILES. I don't have a specific number on that. I could look into it. For liquefied natural gas facilities, pre-filing is mandated under the statute. It is not mandatory for pipeline and storage projects, however, we do meet with applicants before the pre-filing were to begin, and we recommend and many choose to use it because they find it a very valuable time to get everyone to the table early. We also work with those federal agencies to have them be cooperating agencies in our environmental document. So——

Mr. MCNERNEY. So how long does the pre-filing stage last? How long does it typically——

Ms. MILES. It is mandated for 6 months for liquefied natural gas facilities. Some applicants choose longer. The real goal of pre-filing is that the time the application is filed——

Mr. MCNERNEY. Right.

Ms. MILES [continuing]. All the information is available for FERC and other agencies who have permits to issue to be able to do their environmental documents and move toward issuing their permits. So some companies will choose to stay in pre-filing a little longer to make sure that the information is going to be available.

Mr. MCNERNEY. So pre-filing takes as long as the applicant wants it to take.

Ms. MILES. Yes.

Mr. MCNERNEY. In your experience, what are some of the reasons other permitting agencies don't always respond in a timely manner?

Ms. MILES. Are you speaking particularly about natural gas?

Mr. MCNERNEY. Correct.

Ms. MILES. As I said, you know, the majority are responding in a timely manner——

Mr. MCNERNEY. Yes.

Ms. MILES [continuing]. For gas.

Mr. MCNERNEY. Well, it seems to me that a 90-day requirement is arbitrary because some projects are very complicated and some projects are very simple. Simply saying that we have to have all the agencies meet a 90-day requirement may actually tie their hands and force them to say no on applicants where, if they actually would have had more time, they could have approved it. Is that a correct assessment?

Ms. MILES. That could be. My understanding is that also it could be 90 days or a schedule that is negotiated with the other agency.

Mr. MCNERNEY. So it might be more reasonable to have a negotiated timeline for every application, rather than just saying 90 days for every application.

Ms. MILES. It could be. The other thing that was a bit of concern is, we feel like using the pre-filing is very—that is the place where it is important that a lot of steps and cooperation and agency identifications begin, and I would not want anything to move later in the process that could be a complication for us, and I have mentioned that in the testimony.

Mr. MCNERNEY. So then to reiterate, I am going to just sum up by saying it might be beneficial to encourage more applicants to go through the pre-filing process, and then have a negotiated period instead of a 90-day strict requirement for federal agencies to respond.

Ms. MILES. Certainly go through the pre-filing process. Ninety days seems a reasonable time to me.

Mr. MCNERNEY. OK.

Ms. MILES. It could be negotiated in some particular instances.

Mr. MCNERNEY. All right, thank you, Mr. Chairman. I yield back.

Mr. OLSON [presiding]. The gentleman yields back.

As fate would have it, the chairman has to run off for a little opportunity, so 5 minutes for some questions.

And first of all, welcome. Good morning. Thanks for coming. Governor LePage, just when we talked earlier about Maine, and what I know about Maine is you have a lot of water, lots over very powerful water, because my brother surfs in York, Maine, every winter. Really cold, and apparently gets some tubing, some really big

waves, much bigger than Galveston, Texas. So I want to learn more about your issue of hydropower. I understand you have done a study on hydropower recently. Can you talk about those findings and what are some of the benefits of hydropower challenges that this bill may fix?

Governor LEPAGE. Well, right now in Maine we have a number of small dams throughout the state. So that you get the picture of Maine, Maine is 35,000 square miles, 90 percent is water and forest. So it gives you a sense that we have an awful lot of natural resources. And we are very proud of it and we take care of it, and one of the things that we do is we are very strong in tourism. We believe that we have the resources to be self-sufficient, and we could do it in a timely manner.

Now, I have heard some talk about liquid natural gas. When I was elected in 2010, there was a project for liquid natural gas to be in Maine, and what happened now it has been canceled. So the point is—what I am saying is, if we were able to energize a lot of these little dams that we have, we could generate 70 megawatts of power for the Maine people, and lower the costs that we are currently paying.

Mr. OLSON. And how are we blocking that, sir? How is Washington, D.C., blocking your efforts to have those little smaller dams——

Governor LEPAGE. Because every application has to go through FERC.

Mr. OLSON. OK.

Governor LEPAGE. Whether it is 2 megawatts, or 500 kilowatt hours, it has to go through. And earlier on in my career, of course, it is a long time ago, it took years to be able to get little dams, and now I hear that we don't even bother because it is just too costly.

Mr. OLSON. And switching to pipelines, sir, some people think pipeline reform—we have the permitting process, is something just for big oil, those companies, and that is something they only have to worry about. My first question is simple on this issue. What do you worry about as the Governor of Maine with these pipeline issues not being approved as quickly as possible?

Governor LEPAGE. Well, like I said, we lost two major employers. We lost one this past winter. And folks, let me tell you some reality here, 500 jobs in a paper company, and the premium on oil, the premium going from gas to oil in the winter months between November and May was $20 million. They closed their doors. And now it is being dismantled. That is why I am pleading for you to do something because we need those jobs.

Now, I spoke to the chairman of Airbus a couple of years ago and this is what he told me. Governor, what is the cost of your energy? I said, we are the cheapest in New England. He said, well, how do you compare with Alabama? He says, Alabama is 4 cents. Folks, at the time, we were 14 ½. Now the region is up to 17. And he said, you may be a good governor but you are very naive on how much energy it takes to assemble a jet.

Mr. OLSON. And we can fix that here in D.C. My questions, Ms. Miles, to you are, your testimony described how FERC acts on gas pipelines, but next panel, Mr. Santa, his testimony mentions that the GMO has analyzed the major pipelines, the approval process,

they have found that FERC takes up to 2.5 years for a certificate. That averages 558 days. Of course, that does include all the delays from other agencies being involved in this process. Can you talk about some of these delays on this larger pipeline project, and how FERC is addressing these long, long, long delays?

Ms. MILES. I haven't looked, actually, at the details of how the numbers were calculated for the GAO report. I do think that there are some projects that are very long and complex and more controversial, and they may take slightly longer to both gather the information that is necessary to do a solid evaluation of the potential effects of the project. I remain though very convinced that the majority of projects go through fairly quickly. It is a quite efficient process, and I think most have been extremely successful.

Mr. OLSON. Well, I encourage you to read the report, ma'am, because it says you average 558 days for approval process, 2.5 years. That is unacceptable.

I yield back, or yield to the gentleman who is up here.

VOICE. Mr. Green.

Mr. OLSON. Mr. Green from Texas is recognized for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. And, Governor, thank you for being here, and also, Director Miles.

Director Miles, thank you for testifying, and I know FERC has a lot of on its plate and I think many of us believe the commission is doing as good a job as possible on natural gas space reviewing applications and issuing decisions. Today, I would like to talk about the FERC process of coordination for natural gas pipelines.

In your testimony, you seemed to encourage more accountability in the pre-file review process. First, when you write natural gas project applications, what do you mean? Are you including every application, or are you including LNG operation and maintenance, or just new construction, or are you using all of them? Is that——

Ms. MILES. All of them.

Mr. GREEN [continuing]. All applications?

Ms. MILES. Yes.

Mr. GREEN. OK. In your testimony you said that FERC is able to act 92 percent on natural gas applications in a year. What percentage of new construction projects has FERC approved in less than a year? Do you know?

Ms. MILES. I do not know, but I would be glad to get back to you on that.

Mr. GREEN. OK. I know for an LNG, import facility now, we used to try and export, but now we are big on importing. I know FERC just approved one for Corpus Christie——

Ms. MILES. Yes.

Mr. GREEN [continuing]. Just in the last few days, and I appreciate that, but I know it takes typically about 18 months for an LNG import facility, and that is not even considering what the Department of Energy needs to do with the—although in the case of Corpus Christie, Department of Energy moved very quickly on it.

Can you explain what type of projects that are included in the other 8 percent of that 92 percent, and what makes these projects different?

Ms. MILES. I would think it is the larger projects that have more issues. It sometimes can be the need to gather further information——

Mr. GREEN. OK.

Ms. MILES [continuing]. From the company so that we are clear that we understand exactly what the potential effects are and we can analyze that.

Mr. GREEN. And some of those issues, I know I have heard and it is—in earlier questions, are these issues with other federal agencies or issues with state-level agencies having to respond or not responding timely for FERC to FERC?

Ms. MILES. I would think most of those are actually FERC trying to gather the information that it needs. We are typically cooperating with other federal agencies and state agencies who have federal authorizations. We will also work with them to review our documents. In our opinion, that is the best way to efficiently operate, is to have all federal agencies reviewing at the same time.

Mr. GREEN. OK. Do you think that there ought to be some time limits on federal agencies, or if you have a problem sometimes in working with you, and I am talking about both the pre-review or the pre-filing review or during the process, do you think there needs to be some time limits on these other agencies responding to FERC's offer of—your offer to them? I know right now you can't tell an agency, Fish and Game or anyone else, what to do, but do you think there would be some good idea to have some time limits on them?

Ms. MILES. Do you mean for being a cooperating agency——

Mr. GREEN. Be cooperative.

Ms. MILES [continuing]. Choosing to be a cooperating agency? I think it can't hurt.

Mr. GREEN. OK. I know the staff invites these other agencies to participate in the NEPA process. What type of response time from the agencies after receiving this information, do you have that——

Ms. MILES. I don't have that, but I would be glad to get back with you on that.

Mr. GREEN. And what if they just don't respond?

Ms. MILES. Well, at that point then they would not be a cooperating agency——

Mr. GREEN. OK.

Ms. MILES [continuing]. With us.

Mr. GREEN. So could they hold up a permit from, say, for example, a transmission line from Canada, although I know that is a State Department issue, but they could hold up a pipeline coming across Massachusetts.

Ms. MILES. We can proceed without the federal agency being a part, and then they would need to do their responsibilities under their own volition. And it could occur after the certificate is issued.

Mr. GREEN. OK, but until they participate, we are not going to get the natural gas to Maine.

Governor, I want to thank you for being here. I know the frustration, and believe me, I am from Texas and I would love to send you some natural gas, but we do have some pipelines that go to the Northeast, but they have a lot of customers already. And I think the closest natural gas you will get is from my friends in Pennsyl-

vania. But we would sure like to get there because again, you shouldn't have to have a paper mill shut down. I will have to admit, I had two paper mills over the last 30 years shut down in my district, and it wasn't because of the high price of electricity.

Governor LEPAGE. I have had three since I have been Governor.

Mr. GREEN. Yes. So, Mr. Chairman, I know I am out of time, but thank you.

Mr. WHITFIELD. At this time, recognize the gentleman from Pennsylvania, Mr. Pitts, for 5 minutes.

Mr. PITTS. Thank you, Mr. Chairman.

Director Miles, I come from a position on this committee as a member who is currently dealing with the issue of permitting a 42-inch natural gas pipeline currently in the application review stage, and my district in Pennsylvania is home to some of the most pristine farmland, conservation space in the country, and my constituency has basically run the gamut of issues relating to the proposed pipeline from eminent domain to Indian burial grounds. One issue that keeps coming up is that of pipeline safety. As noted in your written testimony, FERC plays an inspection role during pipeline construction, but the Department of Transportation has jurisdiction to establish pipeline safety regs for operating reliance. So my question is can you tell us about the coordination you engage in with DOT to ensure that pipelines will meet their regulations, and ensure that nothing falls through the cracks as jurisdiction transitions from FERC to another agency?

Ms. MILES. Yes, as you state, the Department of Transportation sets the standards, and when we review the applications we are checking to make sure that they meet those, and any analysis that needs to be done, we will do that, looking at volumes of flow and safety aspects of that.

We do work with PHMSA, regularly coordinate with them on making sure we are clear on their standards, and that they are addressed through our evaluation.

Mr. PITTS. One issue of concern to some of my constituents is the independence of FERC. Some perceive FERC as being captured by the industries it deals with, rubberstamp, if you will, and they point to statistics that reveal that virtually all of the applications that run the entirety of the FERC process are approved. Can you please speak to that concern?

Ms. MILES. Well, I would say that many applications that come before us that we are looking at during the pre-filing period change dramatically through alternative routes, alternative systems, before we get to the point where the commission makes a decision on the appropriate project; whether to go forward with it, and if so, what conditions to include in it. So the commission takes into account and listens very carefully to comments from the public, from Indian tribes, from other state and federal agencies. Those are taken into account in trying to work through, what is the appropriate—looking at both engineering and environmental consequences of a project.

Mr. PITTS. Now, in your written testimony, you stated that the discussion drafts addressing FERC process coordination has commendable goals, improving transparency, predictability of the agency actions, in particular. My question is, might these transparency

efforts in the bill help alleviate concerns that FERC is a rubberstamp for the industry?

Ms. MILES. I believe we are quite transparent already, but any time we could add something to improve on that, we are most willing to. I think one of the things that this bill does is to make available on a Web site at the commission the established schedules and expected completion dates, and that type of information that many may be aware of.

Mr. PITTS. Now, some outside groups have urged my constituents to work outside the FERC process to oppose pipeline construction, given their perception of FERC's independence. And oftentimes, these groups advocate a turn to politics. My question is, can you please tell me how my constituents can best have their voices heard during permitting process?

Ms. MILES. Yes, I certainly would hope that they would attend our scoping meetings. I would hope that they would file written comments also so that we clearly understand what their issues and concerns are. I would also ask them to subscribe through our electronic system to the project that they are concerned about, and they can keep up with what is going on with it every day. I would ensure them that commission staff is looking very carefully at everything as we go through the analysis, and that the commission in the end, when it makes its decision, will look at the entire record that has been developed for that project.

Mr. PITTS. Thank you. My time has expired.

Mr. WHITFIELD. Gentleman's time has expired.

At this time, recognize the gentleman from New Jersey, Mr. Pallone, for 5 minutes.

Mr. PALLONE. Thank you, Mr. Chairman.

My questions are of Ms. Miles. First, on the hydropower. Does FERC have a statutory mandate to protect water quality?

Ms. MILES. Our mandate is to protect all developmental and non-developmental resources, and that would include the range of environmental resources of which water quality is certainly one.

Mr. PALLONE. And how about statutory mandate to protect access to public lands?

Ms. MILES. We do have a responsibility to provide for recreation and access at projects, as it is appropriate for specific projects.

Mr. PALLONE. And what about a mandate to protect fish and wildlife?

Ms. MILES. Yes, that is also a part of or comprehensive development and need to take into consideration all environmental and non-environmental resources.

Mr. PALLONE. My concern is that the discussion draft appears to grant FERC near-exclusive statutory authority to enforce state and federal mandates under the Clean Water Act, the Endangered Species Act, and agency Organic Acts, and even though you say you have some authority, my concern is that that is not your primary authority.

Is FERC seeking this authority at the expense of states and the Departments of the Interior, Commerce, and Agriculture respectively? I mean, obviously, they have authority over these same things that I have asked about. Are you actually seeking this authority at their expense? I am only asking you the questions, not

the Governor. I mean are you initiating that? Are you asking for it?

Ms. MILES. No.

Mr. PALLONE. OK. Let me ask about—buried in the language of the draft there is a two-word change to Section 4(c) of the Federal Power Act, and the words of the existing statute, shall deem, are replaced by the single word, determines. The context of this change is the mandatory conditioning authority of the resource agency. You follow what I am asking you? Is this a significant change from current law?

Ms. MILES. I don't think I can——

Mr. PALLONE. Answer?

Ms. MILES [continuing]. I quite follow the details of that. Are you referring to the alternative conditions?

Mr. PALLONE. The mandatory conditions, sorry.

Ms. MILES. The mandatory conditions?

Mr. PALLONE. Yes.

Ms. MILES. I think I said earlier that my sense, and I am speaking for myself, is that the agencies should provide—they are the ones that were given by Congress the responsibility to provide their mandatory condition for their reservation, whether it is land under the federal land-managing agency, or Section 18 for fishway prescriptions.

Mr. PALLONE. But——

Ms. MILES. I believe that is their responsibility.

Mr. PALLONE. But what would be the practical effect of this change on the ability of the resource agencies to protect and manage things under their jurisdiction? Can you answer that from a practical point of view?

Ms. MILES. I believe that the draft discussion document is very complicated, and I am not sure that I have digested exactly what the goal is and the intent of each word. I am generally supportive of some aspects of it, and I am certainly supportive of any ability to move quicker and less costly in developing hydropower in this country, and an efficient system. The actual meaning of each word in the bill, I can't talk about today, but I would be happy to discuss that further.

Mr. PALLONE. OK. Let me just ask you a question about the natural gas pipeline regulation. My colleagues have said that we need the deadlines in this bill to hold federal agencies accountable, and ensure that they don't just sit on applications. You mentioned in your testimony that since 2005, the commission has authorized nearly 10,500 miles of interstate natural gas transmission pipelines, and GAO has concluded that FERC's pipeline permitting is predictable and consistent, and gets pipelines built. In your experience, are there significant delays in the review of natural gas pipeline applications at the commission?

Ms. MILES. I think the majority of pipeline applications are moving at a reasonable pace.

Mr. PALLONE. All right, so just the last thing, Mr. Chairman. So of the small number of applications that take a little longer to review, are these delays due to slow walking on the part of FERC staff? I would assume that more complex applications would and

should take longer to review. So what is the reason for those that are not——

Ms. MILES. They tend to be more complex, more controversial, probably the larger projects that require more information-gathering.

Mr. PALLONE. OK. Thank you. Thank you, Mr. Chairman.

Mr. WHITFIELD. Gentleman's time has expired.

I know the Governor wanted to interject at one point. Did you want to make a comment?

Governor LEPAGE. Yes, a couple of points I wanted to make. As I understand, the draft of the bill is for small, non-producing hydro facilities. It is not the large project, it is the small, little dams that are not being produced, the less megawatt, maybe 3 to 4 megawatts, which is really not a real problem in our state. Believe me, there are so many that would just jump at doing that opportunity, and I don't believe it has any impact to the Federal Government. The only ones that are concerned about it are the people here in Washington, not the people in Maine. People in Maine see that as an extra few megawatts of power. So I don't see the impact. But I will say this, to go to your point about do other agencies have an impact, I will give you a real example. We have in Maine the Canadian lynx. The Canadian lynx is called Canadian lynx because it is primarily in the real northern reaches of Quebec. The very southern border might cross over into Maine because we have a few on top of the State of Maine. It took 7 years, because in the United States, it is an endangered species but it is not native to the United States, but it took 7 years to get an incidental taking permit, which we just got a year ago. My predecessor put it in several years ago. And U.S. Fish and Wildlife just sat on it for several years. And so my point is, the importance of what we are trying to accomplish here, at least from the State of Maine, is very simply this. You have rules. No problem. We have no problem with that. Tell us what they are, give us a timetable, we get it done or we don't get it done. But the danger is this. The reason the lyn permit took so long is they gave us a set of things to do. We did them. Then they gave us more things to do. We did them. They gave us more things to do. We did them. And it dragged on for 7 years. If that was tied to a hydro project, it is done, or if it is tied to natural gas, it is done, because no one, for these small projects that I am talking about, 500 kilowatt hours up to a megawatt or 2 megawatts or 3 megawatts, are going to spend their resources, the amount of money and time to permit such a small facility. So we are talking about small, little dams in our state that really are not—we are not talking the Boulder Dam here, we are talking about little, tiny projects along little streams, rivers that are already there, the dams are already there. It is just a matter of putting generation on it. So it is a totally different—we have gotten away from what I think the whole purpose is.

Mr. WHITFIELD. Well, thank you, Governor, for that comment.

At this time, recognize the gentleman from Mississippi, Mr. Harper, for 5 minutes.

Mr. HARPER. Thank you, Mr. Chairman. And thanks to both of you for being here.

And, Governor, thank you for your insight, and we certainly—it is not the first story we have heard about difficulties. And it almost appears that the delays are built in to keep others from trying to even go through the process, to make it so time-sensitive and so expensive that people just decide it is not worth the effort. Do you believe that?

Governor LEPAGE. That is exactly what I am talking about. For these smaller, little projects, it is all about you delay them until they get discouraged and they have spent enough money.

Mr. HARPER. Thank you very much.

If I may ask you this, Ms. Miles. I am aware of four pending hydropower projects at my State of Mississippi. These proposed projects are below dams that already exist, there would be no new dam or impoundment, and the projects propose to make beneficial use of the water resources to generate clean electricity. Generally, how long does it take for that process? In general terms, how long should it take?

Ms. MILES. The timeline for hydropower projects varies dramatically. For small projects like what the Governor may be talking about, where there aren't any environmental resources that there is much concern about, we have issued licenses in as short as 6 months from the time we have a complete application. For a complicated project——

Mr. HARPER. Define complicated.

Ms. MILES. Well, where there are many issues. There may be endangered species, it could be any number of aspects of the environment——

Mr. HARPER. OK.

Ms. MILES [continuing]. And it would be a larger project with more construction.

Mr. HARPER. The examples I am using in Mississippi, for instance, that there is no new dam or impoundment, you would consider that a less complicated situation, I am assuming?

Ms. MILES. Yes, I would. And I don't know the situation with your individual projects, but one of the things that is going on is there is a DOE report that talks about a large amount of hydropower potential in the U.S., that there are 80,000 dams, and there is only a very small percentage of them that have hydropower on them. And it also lists the top projects where you are going to get your best bang for your buck, where they have the potential to have maybe a 30 or 40 megawatts of power added. Many of those are Corps of Engineers or Bureau of Reclamation Dams, and one thing that is in my testimony is perhaps a suggestion for trying not to have duplicative federal agencies, is that those agencies whose dams those are take on the responsibility for siting the nonfederal projects at their dams and remove FERC's——

Mr. HARPER. OK. Well, you raised——

Ms. MILES [continuing]. Jurisdiction.

Mr. HARPER. You raised an interesting point there. I know that certainly FERC employs a large number of fish biologists and other scientists. Would it not be possible for FERC to just adopt other agencies' environmental analysis into the appropriate documents?

Ms. MILES. With the hydropower projects, we are the lead agency, so those other agencies would cooperate with us or adopt our analysis.

Mr. HARPER. Certainly, but other cases, you would defer to others, I would assume.

Ms. MILES. We could.

Mr. HARPER. OK. The Natural Gas Act grants FERC authority to set deadlines for the various permits required to construct the natural gas pipeline. When is a final decision on a federal authorization due after the commission issues its final environmental document?

Ms. MILES. Currently it is 90 days.

Mr. HARPER. OK. How did FERC arrive at a 90-day deadline?

Ms. MILES. Gosh, was that in the statute? I can't remember.

Mr. HARPER. If you know.

Ms. MILES. I don't know for certain. I——

Mr. HARPER. Well, we would assume if you don't know, probably no one——

Ms. MILES. Well, others will know.

Mr. HARPER. OK.

Ms. MILES. I believe it was in—I don't know if it was in the statute or it was established through our regulations.

Mr. HARPER. That is fine. Have there been specific instances that you are aware of where other agencies were aware of the deadline set by FERC and simply failed to comply?

Ms. MILES. There are times I am sure where they have not.

Mr. HARPER. Do you know how long that some agencies have failed to meet deadlines set by FERC?

Ms. MILES. I do not.

Mr. HARPER. Could you obtain that information to us if——

Ms. MILES. I am not——

Mr. HARPER [continuing]. It is available?

Ms. MILES. I am not certain. I will look into it.

Mr. HARPER. OK, thank you very much. And my time has expired. Thank you, Mr. Chairman.

Mr. WHITFIELD. Thank you.

At this time, recognize the gentleman from New York, Mr. Tonko, for 5 minutes.

Mr. TONKO. Thank you, Mr. Chair.

Ms. Miles, this bill provides that all other agencies that participate in the pipeline review process must give deference to the scope of environmental review that FERC determines to be appropriate. In other words, the bill before us would apparently have FERC tell other agencies what to consider when writing and issuing their permits, as required by federal law. That would require FERC to duplicate the expertise of the EPA, the BLM, the Fish and Wildlife Service, and the Army Corps of Engineers. That does not sound feasible to me. So I ask, does FERC have the necessary expertise to determine the appropriate scope of environmental review for these coordinating agencies?

Ms. MILES. We have a very technically adept staff, however, for the other agencies with permitting responsibilities, we discuss with them what the scope of the analysis that they believe is necessary

for them to issue their permits would be, and try to accommodate that as much as we can in our environmental documents.

Mr. TONKO. So having those necessary bits of expertise may not necessarily be in place as we speak?

Ms. MILES. FERC's has a wide range of expertise. We are 340 people. We are made up of scientists who cover all the resource areas that come before us in analyzing projects, as well as engineers who can do that analysis. So I feel very comfortable with our technical expertise. I do believe the other agencies have responsibilities under their mandates, and what we do is to try to work with them, understanding what each other's goals are.

Mr. TONKO. And further, does FERC have the resources to carry out the requirements of this provision?

Ms. MILES. Currently, we have the resources we need to do our work. If we are given significant extra responsibilities, we would need to examine whether we do.

Mr. TONKO. Thank you. And finally, as you mentioned in your testimony, and I quote, "The comission staff gives deference to these agencies' opinion of the scope of environmental review needed to satisfy their NEPA obligations, as they are best equipped to determine what information satisfies their statutory mandates." So the language of this scoping provision would effectively reverse the current coordinating practice at FERC, would it not?

Ms. MILES. Yes, we do have some concern that it has more of an oversight responsibility than we have right now with more of a cooperative relationship.

Mr. TONKO. All right. And then would this provision improve or expedite, in your opinion, the current pipeline permitting process existing at FERC?

Ms. MILES. My concern is, as I have said in my testimony, is that it moves some aspects of what we do now under our regulations, later in the process, and I don't believe that is valuable. I believe it needs to be done early in the process.

Mr. TONKO. Yes.

Ms. MILES. And there are a few other things.

Mr. TONKO. OK. There are a number of gas pipeline projects underway in my home State of New York. Some of these are multistate pipelines, some are expansion projects. We consume a lot of gas in New York and in other states in the Northeast, so I believe we need additional infrastructure to ensure reliable service for gas customers. Of course, as with any large infrastructure project, there is opposition. Some absolute and firm, some can be satisfied with alterations to a given project to address specific concerns or problems. But that times time. The public is often less organized, and slower to the table than industry, perhaps with less resources, and states and local communities have concerns and want to participate. That, again, takes time. My understanding is that most of these applications, when they are complete, are approved within a year or two. Is that correct?

Ms. MILES. Yes.

Mr. TONKO. OK. So, frankly, that seems to be very reasonable. In fact, some of my constituents would probably want more time for deliberation in this process. I am concerned that shortening this process further could lead to compromises in safety, in fewer envi-

ronmental benefits, and in more resistance to these projects by the public and local communities. Is this process indeed too long?

Ms. MILES. The current process, as I have said, is—with—according to our statistics, we are doing the majority of the projects within 1 year, which is—seems a reasonable period of time.

Mr. TONKO. And do we not need to provide sufficient time for the public to weigh-in on projects that will operate for what could be decades?

Ms. MILES. Yes, it is very important, and it is built into the process, that the public has adequate opportunity to participate.

Mr. TONKO. With that, I thank you very much. And my time has——

Mr. WHITFIELD. Time has expired. Thank you very much.

At this time, chair recognizes the gentleman from West Virginia, Mr. McKinley, for 5 minutes.

Mr. MCKINLEY. Thank you, Mr. Chairman.

I gather that the genesis of this legislation and this hearing are all about grid reliability. We have had numbers of meetings here and hearings about grid reliability, and this is one way to do it, either hydro or gas, to be able to expedite that. There is a study, I know, done by the University of Minnesota that talks about the concern for grid reliability because they say in the Midwest annually we have about 92 minutes per year that we lose power, and you in the Northeast and in New England the average is 214 minutes are lost annually, as compared to Japan, Japan only has 4 minutes a year in grid reliability. So my concern is, with a lot of these regulations that are being imposed on us, is that things like the EIA has come out and said that if we continue on with this, we are going to lose 25 percent of our coal-fired generating capacity within the next couple of years. The PJM came out with a report in 2014 that said after the polar vortex, that we came within 500 megawatts for 5 minutes; 700 megawatts for an hour, that we came that close to having a massive power shortage in America. And that compliments what FERC's Commissioner Moeller came out and he said that we had better be concerned about this because we are going to have more blackouts, rolling brownouts in the Midwest by 2017 if we don't do something.

So my question to you, Ms. Miles, is—and thank you—you have been with the FERC now for 30 years. I understand you joined in 1985, so you have seen quite a change perhaps within the group. Do you think that there is a real grasp of this situation of where we could be faced with brownouts? Do you think—was Moeller correct that should be concerned about this by the next 2 years, if we continue with these regulations that we are going to have shortages?

Ms. MILES. I can't speak to reliability issues. That is not a part of my purview. I can speak to the issues that are here on the bills that are before us today, and that my office does which—with making sure that we do the best we can under the statutes that we have to provide a process that is as efficient and provides opportunity for everyone to comment and to address the issues.

Mr. MCKINLEY. Do you think—but under your purview, do you have—are you concerned about brownouts?

Ms. MILES. As I said, that is not a part of my responsibility.

Mr. MCKINLEY. So you have no opinion at all on whether or not brownouts could occur in this country?

Ms. MILES. My responsibility——

Mr. MCKINLEY. OK, I guess that may or may not be under your control, but our concern is we are building back on this grid reliability that we have had so many hearings about. This is a positive aspect coming out of this legislation that we are going to be able to provide more. If coal is going to be diminished in its use, at least we ought to be able to come back with hydro and gas. And when we have had roundtable meetings back in northern West Virginia, that is the biggest concern we hear from the drillers. They can't get their gas to market. So I am hoping that this legislation can be advanced so that we can get the power to the Northeast, we can get the power to the east coast so we can have LNG. So I am very concerned that FERC seems to be perhaps slowing things down a little bit. And I just want to be sure, because that is what you were saying, you don't know anything about brownouts, but unfortunately, I hope that you can go back and ask some other members of FERC what these—if I have misunderstood something, but I think we are facing some real concerns in this country if we don't get legislation like this adopted so that we can avoid the brownouts and help our industry.

Ms. MILES. I want to make clear that I believe that a—good parts of these legislation that are going to—toward the intent of making sure that the FERC process is efficient and timely are important.

Mr. MCKINLEY. Sounds like a great answer in Washington, doesn't it?

I yield back the time.

Mr. WHITFIELD. Gentleman yields back.

At this time, recognize the gentleman from Maryland, Mr. Sarbanes, for 5——

Mr. SARBANES. Thank you, Mr. Chairman. Thanks to the panel.

So I mean I think your last answer was actually a pretty good one in terms of the desire to have things move efficiently and timely, and I don't begrudge my colleagues' aspiration for all of this process to happen more quickly. The problem is that if you put some of these fixed timelines in place, not only is there the issue that Congressman Tonko mentioned, which is where maybe FERC is being asked or compelled to substitute its expertise for that of other agencies in some instances, but if there is a timeline being put in place, that is a process thing, but it can have an impact on the substantive issues that need to be addressed. Most of the conversation here has related to the relationship between FERC and other federal agencies in terms of trying to get whatever review they are undertaking as part of a project done in a timely way, and the goal here is to give FERC the ability to kind of ride heard over that process and kind of corral the other agencies into a more expedited time frame. But as I understand it, Ms. Miles, it also has implications for state-level reviews and permits that would be issued as well, is that correct?

Ms. MILES. Yes, there are several federal authorizations that are carried out by state agencies, like the water quality certification under the Clean Water Act.

Mr. SARBANES. Right, and my concern is that states are doing their best in a lot of these instances where they have been given responsibility on the environmental front, certainly, to make sure that these projects are being done in a way that don't negatively impact the environment there in the state. And that capacity is being pulled away from them if there is some kind of a requirement that the whole process be finished within a certain period of time. And what I don't quite understand is oftentimes, our colleagues on the other side are complaining about when the Federal Government gets in the way of the states being able to carry out things at the state level that they think are important to them, but the effect of this statute or bill, if it were to be passed, would actually supplant a lot of the states' ability to fulfill its obligations to its own residents to make sure things are being put in place.

Specifically, there is a project in Maryland right now, the Conowingo Dam, where certification from FERC has been forthcoming, but there is still some review that the Maryland Department of the Environment needs to do to make sure that the water quality standards are being met, and the ultimate relicensing is conditioned upon that permit being issued. And Exelon Corporation, which owns the Conowingo Dam, has undertaken to do a study. They have agreed to do that. That process is moving forward. If we had the kind of regime that is contemplated by this statute in place, there could be the potential situation where, because Maryland wasn't moving fast enough to adhere to some time frame that was being imposed upon them by FERC, Exelon would have the opportunity to come in and sue as a result of them failing to meet that timeline. And then you are undermining the concerns of Maryland residents in terms of the environment. So I just wanted to point out that it has significant implications for the kind of state-level review that is important to conduct.

And, Governor LePage, I thank you for your testimony. I understand the frustration, if you are looking at like a small dam and you just want to get generation put on top of it, as you said, and the process seems to go on and on forever. But I think the agency—Ms. Miles spoke to the fact that projects that are less complex can be handled in a more expedited way. We can maybe look at how to help with that dimension of things without imposing across the board this kind of time restriction, which could either have the effect of the agency saying, you know what, we can't get done in time so we will just say no, which wouldn't be good as a result, or issuing some kind of permit without really there being a good basis for it, and then there be consequences down the line. So I think we have to be very careful about that.

Governor LEPAGE. Well, there are two things about that. Number 1 is, on the pipeline we are talking one thing, which are usually much larger. Give you an example of what we are talking about, these little dams. Take a farmer who is farming 100 acres of potatoes, and he has a little pond, he has a little dam on his property to have pond for irrigation, he could put a little generator on that and use the power from the dam for his irrigation. FERC has to be involved in that. That power is going to be used on the farm. It is like a little windmill on your farm. That is all we are asking about. Don't believe FERC should be involved in that. I will

also say one other thing. I can't speak for the other 49 states, but I guarantee you in the State of Maine, we will beat the Federal Government every time in getting permits.

Mr. WHITFIELD. OK. At this time, recognize the gentleman from Texas, Mr. Barton, for 5 minutes.

Mr. BARTON. I just want to say amen to the Governor of Maine. Move to Texas. We like your attitude.

Mr. Chairman, I am going to concentrate on the section of the proposed draft that deals with the Natural Gas Act.

Back in 2005, we passed a major energy bill called the Energy Policy Act of 2005, and in that, we gave the agency, the Federal Energy Regulatory Commission, additional authority to review pipeline applications. With all due respect, it doesn't look to me like the agency is using that authority. If we are going to shut down all these coal plants, Mr. Chairman, we are going to have to replace them at some point in time with some other kind of plant, and in most cases, that is—it could be a solar plant, it could be wind, but in a lot of cases it is going to be natural gas. So to get the gas to the plant, we are going to have to have more pipelines.

The good news is that we have lots of natural gas to send, to use in electricity generation. The bad news is we have to get those pipelines built to get it there.

So my first question to the gentlelady from the FERC, does your agency really want to be the lead agency, because it doesn't look to me like you do?

Ms. MILES. I believe that we have taken the role of lead agency. We have established regulations to carry out what was in EPAct 2005, that the commission is the lead agency and it does establish the schedule. And we do have a consolidated record. Whether the applicant chooses to take anyone to court, that is really their decision and not FERC's decision.

Mr. BARTON. Well, but the proposed draft takes what we did in 2005 and gives the FERC some additional enforcement authority, not you personally, but your agency doesn't appear to want. Would you rather we took all that away and give it to the Department of Energy, or the Department——

Ms. MILES. I don't——

Mr. BARTON [continuing]. Of Commerce? I mean you are either going to be the lead agency or you are not, and my preference would have FERC be the lead agency. Number 1, you are smaller, the staff of the FERC tends to be more results-oriented, I think is a fair way to say it, so there are a lot of reasons to give you additional authority, but you have to want to use it, there has to be a culture at the FERC that you don't mind—if you are going to be the lead, that means you are actually going to lead. Sometimes you can collaborate, sometimes you can consult, but every now and then you have to say this is the way it is going to be, let's get it done. So I am serious when I—the draft as it is currently structured gives additional enforcement and enhanced authority to the FERC. Is that something that the agency is comfortable with, or would you rather we not and we give to some other—make you the non-lead agency? It is a fair question.

Ms. MILES. The overall question, I think we are very well positioned to be the lead agency. I think there are some aspects of the

discussion draft that we would like to have conversations about. There are aspects that I think are very good. One of the main situations is, is there accountability or enforcement if someone does not comply with this. In this bill, you do have the aspect, which I have not seen before, of having the heads of other agencies, who many not have complied with the schedule, report to Congress. That is a measure of accountability that has——

Mr. BARTON. Well——

Ms. MILES [continuing]. Some potential.

Mr. BARTON [continuing]. My time is about to expire, Mr. Chairman, but I support the discussion draft's increased authority for the FERC if the FERC will use it, and if we can get assurances that it is something they are comfortable with. And I understand, when you are an independent agency and you don't have a lot of people, it is difficult to deal with some of these other federal agencies that are much larger and have more staff, much more bureaucratic, but the good news is if you are the lead agency and you will use that authority, the Congress will back you up, and will get more pipelines built and will get more energy produced, and will create a better economy. So there is an endgame that is a positive, if your agency will use the additional authority.

And with that, Mr. Chairman, I yield back.

Mr. WHITFIELD. Gentleman's time has expired.

At this time, recognize the gentleman from Virginia, Mr. Griffith, for 5 minutes.

Mr. GRIFFITH. Thank you, Mr. Chairman.

Governor, I know you have to get power, and that is a problem for a lot of states as we press forward. I will assure you that we can ship you all the coal from southwest Virginia that the Federal Government will allow you to use. And Ohio. Can't leave out my good friend, Mr. Johnson. And West Virginia, and for my colleague who spoke earlier.

That being said, we have, in my opinion, unreasonable regulations on the use of coal, unreasonable timetable on a number of the new regulations coming into effect. And so the natural gas companies, I understand why they are doing it. They are proposing all kinds of pipelines be built, not just in your area, but they have a number that are coming through western Virginia. And so, Ms. Miles, that raises a lot of questions that I have for you this morning.

The pre-filing review phase is not mandatory for natural gas pipelines. Should it be?

Ms. MILES. You are correct, and that is something that we actually have wondered about ourselves. I think that there are any number of small pipelines that it is not necessary to have it, so should the Congress decide that is a place they want to go, we would need to have the ability to have the smaller projects not involved in it because that would slow it down for projects——

Mr. GRIFFITH. Perhaps——

Ms. MILES [continuing]. That don't need it.

Mr. GRIFFITH. Perhaps you can make a suggestion and that can be incorporated into this draft in that regard. As a part of that, you are holding scoping meetings. In my district, as well as in others in western Virginia, it has come to our attention that—and I know

it is a longer section of pipeline, but the greater population is perhaps in the Roanoke and New River Valleys, and FERC only had two for the Mountain Valley Pipeline—two public hearings or scoping meetings in the Roanoke and New River Valleys, had four in West Virginia. The Roanoke Board of County Supervisors has requested an additional one. And I would say to you that Congressman Goodlatte and myself have submitted a letter requesting that you all hold another scoping meeting in regard to the Mountain Valley Pipeline, and would appreciate if you would look into that.

As you know, I represent from Roanoke, all the way through the west of southwestern Virginia, the Allegheny Islands, and Southside. Congressman Goodlatte represents that area from Roanoke north, including Mary Baldwin, where I understand that you are an alumni.

Ms. MILES. Yes.

Mr. GRIFFITH. But it is concerning. One of the pipelines actually goes through Augusta County. And so we have 2 that are currently on the drawing board, I think a third is about to be there. There may be a fourth. This morning in the Roanoke Times, there is an op-ed piece by Rupert Cutler, and he indicates that as a part of your commission, that preparation of a single regional environmental impact statement, incorporating all of the pipelines in the region, should be done. Are you all doing that with these various pipelines, because it is of concern to the region because not only do you have the typical problems, but you have the Blue Ridge Parkway, the Appalachian Trail, a number of national forestlands that have to be crossed by these various pipelines?

Ms. MILES. I am not prepared to discuss particular projects this morning, but we certainly will take all comments into consideration when we make decisions about them.

Mr. GRIFFITH. Is Mr. Cutler, a former member of the Roanoke City Council and an environmentalist, is he correct that it is a part of your charge though to prepare a single rational environmental impact statement incorporating all of the regional pipelines?

Ms. MILES. Our responsibility is to analyze all the pipelines, and it is not defined how we do it, but under the National Environmental Policy Act, we need to analyze the issues, give everyone the opportunity to comment on them, display that so the public can comment on it before making any decision.

Mr. GRIFFITH. He also asserts that you all have to look at the marketplace, and with all of the different pipelines being proposed now in an attempt to figure out a way that by 2020, we have to start replacing coal if the Clean Power Plan continues to go forward as expected, are you all looking at whether or not we have pipelines stepping over each other, and that we will have a greater capacity than is necessary? Is that part of your charge, and I am going to ask for a yes-or-no answer on that, is it just part of your charge? Because I am running out of time?

Ms. MILES. Yes, we need to look at whether there are shippers that have been—have signed up for the capacity to move that——

Mr. GRIFFITH. OK.

Ms. MILES [continuing]. Transportation.

Mr. GRIFFITH. And then one of the concerns I have is, we have had a lot of people upset by these various pipelines, and particu-

larly in the Mountain Valley Pipeline. It started off coming through Montgomery and Floyd and Henry in my district, and part of Robert Hurt's district in Franklin County. Now it is looking like it is going to go through Craig and Roanoke Counties, and then go through Franklin and Henry. A lot of folks have been distressed because it looks like they just put a line on the page. Can you encourage the companies to do a little more preplanning, and not have such large shifts? We are not talking about just within a small border, we are talking about, you know, completely different counties being involved, different Board of Supervisors, different folks who have to be involved. Could you please encourage that as they move forward, they try to figure out exactly where they want to go? Or when I say exactly, I mean within a reasonable corridor——

Ms. MILES. Yes.

Mr. GRIFFITH [continuing]. Before they start putting a lot of folks in distress whose land may be taken under eminent domain.

Ms. MILES. That is a part of the pre-filing process is to work through with the companies where they are, and to work with the public and their thoughts and understanding of where is the appropriate siting.

Mr. GRIFFITH. OK. I appreciate it very much.

I yield back.

Mr. WHITFIELD. At this time, chair recognizes the gentleman from Ohio, Mr. Johnson, for 5 minutes.

Mr. JOHNSON. Thank you, Mr. Chairman. I appreciate it, and thank our panel for being with us here this morning as well.

Director Miles, one of the concerns that you raise on page 17 of your testimony regarding the trial type hearing and the provisions under the discussion drafts to move all of these to FERC administrative law judges has to do with administrative costs, but isn't it true that FERC recovers all of its administrative costs for the hydro program from licensees under annual charges required by the Federal Power Act?

Ms. MILES. Yes, that is true.

Mr. JOHNSON. OK. All right. And, Director Miles, I represent eastern and southeastern Ohio which, as you well know, we have been blessed with the Utica and Marcellus Shale in that part of the state, which hold an abundance of natural gas reserves. One concern that I hear routinely from the folks who are employing my constituents to produce this resource, and recover this resource, is that if we don't have adequate pipeline to get the natural gas to the market, these jobs are very much in jeopardy.

In your testimony, you note that the draft pipeline reform legislation has unintended consequences that could slow down the process. So my question to you—things like moving some activities to later in the process. So my question to you is, would you be in favor of moving those things closer up so that they can be expedited?

Ms. MILES. I would like to look at what that would look like, and have the opportunity to comment on it.

Mr. JOHNSON. OK, and are there other changes that you think the committee could make to the legislation to speed up the process so that the permitting can get done quicker, and we can make sure we save these jobs for those hard-working people?

Ms. MILES. I don't have anything else to suggest right now. I do have some concern that we want to maintain some ability for flexibility, and not get too strict so that we can't work a little differently with projects that are smaller and may go even quicker than this.

Mr. JOHNSON. Yes.

Ms. MILES. So, you know, if you do too much on the outside end to try—we want to make sure we are not messing up the ones that are moving through really quickly, so——

Mr. JOHNSON. Sure. Well, you may have heard recently in our region of the state, our region of the nation, the Appalachia region of the nation, that, as many times often at the back of everybody's mind in Washington, D.C., we have had it announced that a projected cracker plant coming into eastern Ohio. Thousands and thousands of construction jobs, and thousand permanent jobs, multibillion dollar, 5-year project. It is a game changer when you are talking about manufacturing coming back to our region and those kinds of things. So the pipeline, to get that gas to these processing plants, and then to send that raw material to manufacturers, it is critically important to the economic viability of our region. So I appreciate that you would consider those things.

Let me ask you one other. Your testimony states that since the EPA Act of 2005, the commission has been able to act on 92 percent of natural gas project applications in less than 1 year after the application is filed. What do you mean by act? How many of these actually received all of the required federal authorizations, and how long did that take?

Ms. MILES. What I mean by act is that the commission has acted.

Mr. JOHNSON. But have they approved them——

Ms. MILES. Many——

Mr. JOHNSON [continuing]. Have they gotten all the way through the process?

Ms. MILES. They have completed the process at the commission. Some orders that are issued may require an authorization from another federal agency. Those usually come through fairly timely.

Mr. JOHNSON. But you have done your part of it——

Mr. WHITFIELD. Excuse me just one minute.

Ms. MILES. We did our part, yes.

Mr. JOHNSON. OK.

Mr. WHITFIELD. Excuse me one minute. When you say—are you talking about—that the FERC application has been granted, or——

Ms. MILES. Yes. The——

Mr. WHITFIELD [continuing]. The certificate has been——

Ms. MILES [continuing]. Commission has authorized it and included in it the conditions that——

Mr. WHITFIELD. OK. Thank you.

Ms. MILES [continuing]. The company needs to apply.

Mr. JOHNSON. Thanks for that clarification, Mr. Chairman, and I yield back.

Mr. WHITFIELD. At this time, recognize the gentleman from Oklahoma, Mr. Mullin, for 5 minutes.

Mr. MULLIN. Thank you, Mr. Chairman. And I appreciate the witnesses for being here.

And, Ms. Miles, I must say, we have a lot of directors, secretaries that come in here, and a lot of times their demeanor is, in my opinion, almost despicable, and I want to commend you on how you are handling yourself today. I think all of us will say that we are wanting to work with you, we are wanting to work with the Governor, we are wanting to get issues resolved, but we are having a hard time understanding where FERC is going. And I understand you control, you know, a small piece of that pie, but we all are having problems. I mean one of the most common complaints I have in my district, I represent the eastern part of Oklahoma, the entire eastern side of Oklahoma, and we have many lakes and several of them are controlled by FERC, and it seems like FERC is growing in their influence in our state. In particular on the shorelines. And, Ms. Miles, you mentioned on page 13 in your testimony that the Federal Power Act determined that matters related to shoreline use, such as recreational flood control and environmental protection, are sometimes more of a local concern and, thus, should be resolved by an entity that is required to consider the overall public interest. Could expand on that comment a little bit more?

Ms. MILES. Yes. Congress established the regime in the Federal Power Act that, in exchange for the use of the public waters of the United States, that licensees need to satisfy public interests, and the public interest might be recreation, it might be the environmental values of the area.

Mr. MULLIN. But what I am trying to get to, are you saying that that should actually be determined by FERC, it shouldn't be determined by the state?

Ms. MILES. That is the regime that was established by Congress. The commission only has responsibility over the lands that are owned or controlled by the licensee. It does not have any responsibility over lands that are under private control. So the shoreline management plans that you are referring to would only cover that licensee-owned portion of the project.

Mr. MULLIN. Completely agree with that, but I represent an area called Grand Lake which is very similar to the Lake of the Ozarks, and also—and Missouri, obviously, and there was an issue going on in—it was either Lake of the Ozarks or Table Rock Lake, I think it was Lake of the Ozarks, where, basically, FERC has come up onto the shorelines and was redrawing the boundary. And last year, I sat in the chairman's office and we asked FERC about this, and they basically described the situation saying that, well, we are using different boundaries now because, back then we used basically the stick surveying mark, and now we are using GPS, and the old boundaries basically aren't acceptable anymore. And so FERC is injecting themselves on telling people how big their house can be on the shoreline, which they own, telling people how many boat slips they can have, and telling them that the existing structures that was built inside the boundaries are no longer acceptable and have to be torn down. And it threw a whole big mess on the shorelines that now we are having the same issue in Grand Lake. And I thinking, well, FERC doesn't even have the ability to control what they have. I mean we are talking about pipelines, we are talking about infrastructure, we are talking about things that you already have and you can't control it, and now you are inserting

yourself farther onto the shorelines. And the way I am understanding it is that you are in agreement with that, that you should be inserting yourself farther on to the shorelines, when actually, the states would be more capable of controlling that. Wouldn't you agree with that?

Ms. MILES. I can't speak to the individual project that you are raising.

Mr. MULLIN. I understand you can't speak to it, but if I am understanding it that you are saying that FERC should probably take control of that area, but what I am saying is don't you agree that maybe the state should? I mean you can't handle what you are getting to right now. You don't have the manpower or the capability to even do something that is as simple as permit gas lines.

Ms. MILES. What I am saying is that Congress basically authorized the regime that the license includes the land that is necessary for project purposes, which includes the generation of electricity as well as the protection of both developmental and non-development or environmental resources.

Mr. MULLIN. So how can I help you get this off your plate then? What would you like to see Congress do with this regime, as you are referring to, because we refer to the FERC a lot as the regime too, and so how do I help you get rid of this regime that you are talking about?

Ms. MILES. If Congress wants to change the balance, then we certainly would be——

Mr. MULLIN. Would you be supportive of it?

Ms. MILES. I would need to see what it looked like.

Mr. MULLIN. OK, thank you.

Mr. Chairman, I yield back.

Mr. WHITFIELD. Gentleman yields back.

And that concludes the questions for the first panel. Once again, Governor, thank you for being here. Ms. Miles, thank you for being here. We look forward to working with both of you as we continue our efforts to develop an energy package. And thank you again for your time, and we will be in touch.

At this time, I would like to call up the second panel. On the second panel today, we have 6 witnesses. I am not going to introduce everybody immediately, but I will introduce you as you are recognized to give your opening statement. And so if you all, when you get time, would have a seat. I want to thank all of your for joining us today, and we appreciate also your patience.

And our first witness this morning will be Mr. Donald Santa on the second panel. He is the President and CEO of the Interstate Natural Gas Association of America. Mr. Santa, thanks again for being with us. And each one of you will be given 5 minutes for your opening statement, and then we will open it up for questions.

So, Mr. Santa, you are recognized for 5 minutes.

STATEMENTS OF DONALD F. SANTA, PRESIDENT AND CEO, INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA; CAROLYN ELEFANT, MEMBER OF THE BOARD, THE PIPELINE SAFETY COALITION, PRINCIPAL, THE LAW OFFICES OF CAROLYN ELEFANT; JOHN COLLINS, MANAGING DIRECTOR OF BUSINESS DEVELOPMENT, CUBE HYDRO PARTNERS; RICHARD ROOS–COLLINS, GENERAL COUNSEL, THE HYDROPOWER REFORM COALITION; RANDY LIVINGSTON, VICE PRESIDENT, POWER GENERATION, PACIFIC GAS AND ELECTRIC COMPANY; AND JOHN J. SULOWAY, BOARD MEMBER, NATIONAL HYDROPOWER ASSOCIATION, PRINCIPAL, WATER AND POWER LAW GROUP, PC (ON BEHALF OF THE HYDROPOWER REFORM COALITION)

STATEMENT OF DONALD F. SANTA

Mr. SANTA. Good morning, Chairman Whitfield, Ranking Member Rush, and members of the subcommittee. My name is Donald Santa, and I am the President and CEO of the Interstate Natural Gas Association of America, or INGAA. INGAA represents interstate natural gas transmission pipeline operators in the U.S. and Canada. Our 24 members operate the vast majority of the interstate natural gas transmission network, which is the natural gas industry analogue to the interstate highway system.

The approval and permitting process for interstate natural gas pipelines has become increasingly challenging. While this has been a good, albeit complex process, there have been some trends in the wrong direction. What was once orderly and predictable is now increasingly protracted and contentious. Most energy experts agree that we will need more gas pipeline infrastructure to connect the new supplies of natural gas made available by the shale revolution, and to support increased demand for gas from manufacturing and petrochemical sectors, electric generators, and other end-users. We need a process that balances thorough environmental review and active public involvement with orderly, predictable, and timely approval and permitting of necessary energy infrastructure.

If enacted, the draft bill before the subcommittee today would modestly improve the permitting process by introducing additional transparency and accountability for federal and state permitting agencies. We support these steps, but continue to urge Congress to create real consequences for agencies that fail to meet reasonable deadlines. Entities proposing to construct or expand or modify an interstate natural gas pipeline must seek a certificate of public convenience and necessity from the Federal Energy Regulatory Commission. While the Natural Gas Act provides FERC with exclusive authority to authorize the construction and operation of interstate natural gas pipelines, a variety of other permits and authorizations are necessary in order to construct and operate such a pipeline. And I think as evidenced by Mr. Johnson's question a few minutes ago, while a lot of the dialogue this morning has been about the timeliness of FERC's action under the Natural Gas Act, the focus of the draft bill really is the timeliness of these other permits and authorizations that are necessary before a pipeline can be constructed.

The Energy Police Act of 2005 provided FERC with new authority to oversee the pipeline permitting process. First, Section 313 of EPAct 2005 clarified that FERC is the lead agency under the National Environmental Policy Act for interstate natural gas infrastructure projects. Second, this section empowered FERC to establish a schedule for all other federal authorizations. In other words, all federal and state permits required under federal law. Section 313 stated that other federal and state permitting agencies "shall cooperate with the commission and comply with the deadlines established by the commission." The draft legislation would codify the FERC rule that established a deadline 90 days after the completing of FERC's NEPA review for all agencies acting under federal authority to make their final permitting decisions.

The beginning of the 90-day permitting deadline would not be the first time a permitting agency would have seen an application from a pipeline developer. By the time FERC completes its NEPA review, it reasonably can be expected that the pipeline project developer will have been engaged in a dialogue with the various permitting agencies for 12 to 18 months, or perhaps even longer. Consequently, permitting agencies will have had ample time to review a proposed project, suggest changes and modifications, and render a final decision.

Although EPAct 2005 authorized FERC to establish a deadline for permitting agencies, it did not create a mechanism for FERC to enforce such deadlines. Instead, a pipeline project developer may challenge a permitting agency's tardiness or inaction in federal court. Doing so, however, is both time-consuming and risky, and this option seldom has been exercises. The lack of permitting schedule enforceability has become the Achilles' heel in the pipeline approval and permitting process. Agencies are free to ignore FERC's deadline in what is currently a consequence-free environment.

Why is the timely approval of pipeline permits important? Pipeline infrastructure is a necessary predicate for fully realizing the benefits of America's natural gas abundance. Abundant natural gas spurred by shale development already has had a profound effect on the United States' economy.

We hope that Congress will ensure that there are consequences associated with pipeline permitting delays so that this critical energy infrastructure can be constructed on a timely basis. Transparency is certainly important, yet it needs to go hand-in-hand with clear accountability for agency inaction or delay.

Thank you for the opportunity to testify today.

[The prepared statement of Mr. Santa follows:]

TESTIMONY OF
DONALD F. SANTA
PRESIDENT AND CHIEF EXECUTIVE OFFICER
INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA

BEFORE THE
SUBCOMMITTEE ON ENERGY AND POWER
COMMITTEE ON ENERGY AND COMMERCE
U.S. HOUSE OF REPRESENTATIVES

REGARDING
DISCUSSION DRAFT ADDRESSING FERC PROCESS COORDINATION UNDER THE NATURAL GAS ACT

MAY 13, 2015

Good morning Chairman Whitfield, ranking member Rush and members of the subcommittee. My name is Donald Santa, and I am the president and CEO of the Interstate Natural Gas Association of America, or INGAA. INGAA represents interstate natural gas transmission pipeline operators in the U.S. and Canada. Our 24 members operate the vast majority of the interstate natural gas transmission network, which is the natural gas industry analog to the interstate highway system.

The approval and permitting process for interstate natural gas pipelines has become increasingly challenging. While this remains a good, albeit complex, process, there have been some trends in the wrong direction. What was once orderly and predictable is now increasingly protracted and contentious.

The United States' robust network of natural gas transmission pipelines has expanded to accommodate the new natural gas supplies made available by the shale revolution. Still, most energy experts agree that we will need even more gas

pipeline infrastructure to connect even greater supply and to support increased demand for gas from the manufacturing and petrochemical sectors, electric generators and other end users. (Pipelines also will have a role in the transition to greater utilization of renewable energy, as gas-fired generators will be relied upon to firm up variable renewable generators.) We need a process that balances thorough environmental review and active public involvement with orderly, predictable and timely approval and construction of necessary energy infrastructure.

If enacted, the draft bill before the subcommittee today would modestly improve the permitting process by introducing additional transparency and accountability for federal and state permitting agencies. We support these steps, but continue to urge Congress to create real consequences for agencies that fail to meet reasonable deadlines. The intent that motivates the draft bill – that is, better coordination to ensure that federal and state permitting agencies thoroughly review and act on pipeline applications on a timely basis – will not be accomplished absent real consequences for agencies that fail to act.

Approval Process for Interstate Natural Gas Pipelines

Entities proposing to construct (or expand/modify) an interstate natural gas pipeline must seek a "certificate of public convenience and necessity" from the Federal Energy Regulatory Commission (FERC), pursuant to section 7 of the Natural

Gas Act.[1] FERC approves projects that it determines are in the "public convenience and necessity;" in other words, projects that are in the public interest. While the Natural Gas Act provides FERC with exclusive authority to authorize the construction and operation of interstate natural gas pipelines, a variety of other permits and authorizations are necessary in order to construct and operate such a pipeline. Importantly, FERC's action pursuant to the Natural Gas Act does not preempt or override other federal agencies (or state agencies acting pursuant to delegated federal authority) in fulfilling their mandates pursuant to other federal laws.

We also should clarify the distinction between the timeline for the FERC certificate process and the variability in the timelines for decisions on the other authorizations needed to proceed with an interstate natural gas pipeline project. The draft bill is intended to address the latter process. FERC has a well-defined and commonly understood process – including detailed rules – for reviewing applications for proposed pipelines. For most major certificate applications, this FERC process includes both a voluntary informal "pre-filing" review that can take between six and 18 months, and a formal application process that generally takes 12 months. This level of certainty and timeliness often is lacking for the federal and state permitting agencies from which a proposed pipeline must obtain a specific land-use or environmental permit. Examples include the U.S. Army Corps of Engineers, which

[1] 15 USC Section 717f

issues permits for a stream or wetland crossing, and the Bureau of Land Management, which issues permits for a federal lands right-of-way.

The Energy Policy Act of 2005 (EPAct 2005) provided FERC with new authority to oversee the pipeline permitting process. First, section 313 of EPAct 2005 clarified that FERC is the "lead agency" under the National Environmental Policy Act (NEPA) for interstate natural gas infrastructure projects. Second, this section empowered FERC to establish a schedule for all "Federal authorizations," in other words, all federal and state permits required under Federal law.[2] Section 313 stated that other federal and state permitting agencies "shall cooperate with the Commission and comply with the deadlines established by the Commission."

A subsequent FERC rulemaking implemented section 313 by establishing a deadline 90 days after the completion of FERC's NEPA review for all permitting agencies acting under Federal authority to make their final permitting decisions. The draft legislation under discussion today would codify this deadline that now exists in regulation.

Two things should be noted here. First, the 90-day permitting deadline is not a deadline for completing FERC's certificate process. No deadline currently exists for

[2] Such as the Clean Water Act, the Clean Air Act, the Coastal Zone Management Act, and the National Historic Preservation Act.

FERC's certificate process, and none is proposed in this draft legislation.[3] Second, the beginning of the 90-day permitting deadline is not the first time a permitting agency has seen an application from the pipeline developer. By the time FERC completes its NEPA review, it reasonably can be expected that FERC and the pipeline project developer will have been engaged in a dialogue with the various permitting agencies for 12 to 18 months – or perhaps even longer. Consequently, permitting agencies will have had ample time to review a proposed project, suggest changes and modifications, and render a final decision.

Although EPAct 2005 authorized FERC to establish a deadline for permitting agencies, it did not create a mechanism for FERC to enforce such deadlines. Instead, a pipeline project developer may challenge a permitting agency's tardiness or inaction in federal court. Doing so, however, is both time-consuming and risky, and this option seldom has been exercised. The lack of permitting schedule enforceability has become an Achilles' heel in the pipeline approval and permitting process. Agencies are free to ignore FERC's deadline in what is currently a consequence-free environment.

Need for Process Improvements

[3] Legislation previously before the subcommittee, H.R. 1900 (H.R. 161 in the current Congress), included a 12-month deadline for FERC's formal application process, but did not include a time limitation on the pre-filing process, and therefore would not have imposed an overall time limit for the vast majority of pipeline projects that first go through the pre-filing process.

A 2013 Government Accountability Office (GAO) report[4] on pipeline permitting provides some useful metrics for the subcommittee to consider. GAO looked at recent "major" projects (those that, due to size and scope, use the FERC pre-filing process) and determined that the average time to process a FERC certificate application was 558 days, with times ranging from approximately one year to almost 2.5 years. This, however, did not include the time needed on the front end to develop a commercially viable project and engage in the FERC pre-filing process. Nor did it include the time needed to obtain other permits, once a FERC certificate had been granted, or the time to construct the project once all permits had been obtained. All told, recent experience suggests that it typically takes about four years for an interstate natural gas pipeline to advance from concept to operation.

The approval and permitting process did not get shorter after enactment of EPAct 2005. A December 2012 report by the Holland & Knight LLP, sponsored by the INGAA Foundation,[5] found that permitting times have increased despite the stated intent of the 2005 law. The report surveyed 51 pipeline projects and compared permitting timeframes before and after enactment of EPAct 2005. The survey data showed more than a threefold increase in the number of federal authorizations that were delayed beyond the 90-day deadline (after the FERC environmental review

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[4] *Pipeline Permitting: Interstate and Intrastate Natural Gas Permitting Processes Include Multiple Steps, and Time Frames Vary*, GAO Report 13-221, February 2013.
[5] *Expedited Federal Authorization of Interstate Natural Gas Pipelines: Are Agencies Complying with EPAct 2005?* INGAA Foundation report 2012.05, December 21, 2012.

issuance), and, more troubling, an approximate sixfold increase in the number that were delayed at least another 90 days beyond that.[6]

The most common delays were for:

1) Bureau of Land Management right-of-way grants;
2) U.S. Army Corps of Engineers Rivers and Harbors Act permits; and
3) Coastal Zone Management Act consistency determinations.

The reasons for these delays varied from lack of agency resources, to lack of agency focus and cooperation with FERC, to permit applications deemed incomplete. Fixing these problems would require a number of actions within regulatory agencies and pipeline companies. Still, the top recommendation from the report was "schedule enforceability."

Therefore, the INGAA Foundation report recommended that Congress amend EPAct 2005 to require that FERC assume the issuance of a permit after the 90-day deadline, or alternatively, that such a permit go into effect automatically once the deadline expires absent a contrary decision from the permitting agency. Quoting from the report:

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[6] Specifically, the report showed an increase from 7.69 percent to 28.05 percent of federal authorizations that failed to meet the 90-day FERC rule deadline for permitting agencies; and an increase from 3.42 percent to 19.51 percent of federal authorizations that were delayed an additional 90 days or longer.

Until such enforcement options are available, the effectiveness of FERC outreach with the other agencies will be limited because other demands imposed on those agencies that have real consequence will take priority.

In sum, certainty is needed. Clear deadlines would prompt action by permitting agencies and hold them accountable for their inaction. This would reverse the recent trend of increasing delay.

Need for New Natural Gas Pipeline Infrastructure

Why is the timely approval of pipeline permits important? Pipeline infrastructure is a necessary predicate for fully realizing the benefits of America's natural gas abundance. Abundant domestic natural gas, spurred by shale gas development, already has had a profound positive effect on the United States' economy and, even more broadly, an effect on the geopolitics of energy. The existing pipeline network is robust, and has proven to be remarkably adaptable to the new reality. Yet, much of our pipeline network was constructed based on now outdated assumptions about the location of natural gas supply and demand. It clearly is not optimized for the energy reality of 2015, let alone 2020 and beyond. As a consequence, consumers in capacity-constrained markets cannot fully benefit from the abundance of domestic natural gas. They often pay much higher prices for natural gas and electricity than consumers in unconstrained markets.

New England is the prime example. The region is heavily dependent on natural gas to generate electricity, and to heat homes and businesses. Those competing demands have placed a heavy, unsustainable burden on the existing natural gas pipeline infrastructure in the region. Simply put, there is not enough pipeline capacity to meet peak demand. As a result, the region struggles with both high prices and operational challenges.

The two key strategies for getting New England through this past winter were: (1) burning fuel oil in power generation units instead of natural gas, and (2) importing liquefied natural gas from the Caribbean through the existing LNG import terminal in Boston harbor. Think about that for a moment. Huge, relatively inexpensive natural gas supplies are 250 miles away, yet the region is burning fuel oil and importing LNG because there is not enough pipeline capacity between Pennsylvania and New England. According to a statement from the six New England governors, released on April 23:

> *...New England is challenged by a lack of natural gas pipeline infrastructure and is losing non-gas power plants, both of which threaten (electric) system reliability.*

Consumers in New England pay dearly. This past winter, while natural gas prices for most of the U.S. hovered around $3.00 to $3.50/Mcf, prices in New England

fluctuated from about $5.00 to $30.00/Mcf. In a hearing before the Senate Energy and Natural Resources Committee on April 28, in which Energy Secretary Ernest Moniz was the witness, Sen. Angus King of Maine referred to this price differential as "appalling for our region," and stated that "it's a pipeline problem, not a gas problem." The senator is correct on both counts.

According to a 2014 report by ICF International commissioned by the INGAA Foundation, the natural gas industry will need to invest about $4 billion annually in new transmission pipeline capacity, through 2035, to keep pace with both supply development and demand. Even if one assumes, as does a recent report by the U.S. Department of Energy, that demand for new major, long-line pipelines has abated, this does not obviate the need for regional and inter-regional pipelines to relieve capacity constraints in the current network. Pipeline infrastructure is necessary for the U.S. to take full advantage of its newfound energy abundance. If a cumbersome permitting process delays pipelines, or if that process drives some investment away from infrastructure development, we will forfeit some of the economic opportunity and consumer benefit that new gas supply otherwise would have created.

Conclusion, and Request for Additional Agency Accountability

The Obama Administration's recent Quadrennial Energy Review (QER) discussed energy infrastructure, including siting and permitting for natural gas transmission pipelines. INGAA agrees with several of the QER recommendations, including:

1) Providing resources to permitting agencies,
2) Facilitating coordination across the numerous federal and state permitting agencies, including encouraging concurrent review,
3) Creating transparency for the permitting process, and
4) Adopting cost recovery for permitting applications.

Several of these ideas are part of the draft bill that is before the subcommittee today. We support these measures that would facilitate coordination among federal and state permitting agencies, enhance transparency and, to a modest degree, improve accountability for the multitude of permitting agencies involved in reviewing proposed natural gas transmission pipelines.

We would also suggest that the subcommittee consider an amendment to this draft bill to allow the use of aerial survey data in situations where a landowner does not grant a project developer permission to perform a ground survey. Survey information is critical to the FERC certification and agency permitting processes. If ground surveys cannot be performed until after issuance of a FERC certificate, then permitting agency approvals might be delayed even further. Aerial or remote-sensing surveys offer a 21st century alternative that would make the permitting process more efficient.

Even these measures, however, are not enough. Real accountability means real, enforceable deadlines, with consequences for tardiness or inaction. We can accept that agencies need more resources, but with those resources should come the obligation to act within clearly defined expectations.

Infrastructure remains the backbone of our nation's economy. How many times do we hear about the need to invest in roads and bridges, seaports and airports, and other forms of infrastructure? Likewise, pipelines are the backbone of our energy economy.

Pipelines should be just as much a national priority as other forms of infrastructure. Americans work to build natural gas pipelines. Americans benefit from lower-cost natural gas to heat their home and lower-cost electricity generated from natural gas. Manufacturing is returning to our shores thanks in large part to affordable natural gas. Affordable natural gas makes the United States the envy of the world, but none of this is possible without the infrastructure – the pipelines – to deliver it.

We hope that Congress will ensure that there are consequences associated with pipeline permitting delays, so that this critical energy infrastructure can be constructed on a timely basis. Transparency is certainly important, yet it needs to go hand-in-hand with clear accountability for agency inaction or delay. We need both concepts in place in order to ensure that interstate pipelines are built in a timely manner. Thank you for the opportunity to testify today.

Mr. WHITFIELD. Mr. Santa, thank you very much for that opening statement.

Our next witness is Ms. Carolyn Elefant, who is a Member of the Board of the Pipeline Safety Coalition, and Principal of the Law Offices of Carolyn Elefant. So thank you for being with us, and you are recognized for 5 minutes.

STATEMENT OF CAROLYN ELEFANT

Ms. ELEFANT. Thank you, Chairman Whitfield. Thank you, Chairman Whitfield, and good afternoon to you and to Ranking Member Rush, and the members of the subcommittee.

As you mentioned, my name is Carolyn Elefant. I am on the Board of the Pipeline Safety Coalition, which is a nonprofit organization that serves as a clearinghouse for factual and objective information to increase public awareness about pipelines, and also to promote environmental and public safety. In addition, in my capacity as an attorney, I represent landowners, conservation trusts, community governments, and other entities that are directly impacted by pipeline infrastructure.

My testimony today will highlight two of the coalition's concerns regarding the draft legislation, which essentially requires federal and state agencies with permitting authorities over pipelines to adhere to deadlines established by FERC.

First, the coalition believes that the legislation is unnecessary. There is little evidence to suggest that it is actually the state and federal permitting agencies that are responsible for delays in development of pipeline infrastructure. And to the extent that they are, companies already have a mechanism in place to enforce those deadlines, which is through bringing suit in federal court; a mechanism that has only been used twice since it was enacted 10 years ago in the Energy Policy Act.

Second, the coalition's greater concern is that the proposed legislation's approach to expediting the permitting process, such as requiring federal and state permitting agencies to confine the scope of their environmental review to those issues identified by FERC, would subordinate the regulatory mandates of FERC's sister federal agencies, as well as state agencies implementing delegated federal authority under statutes like the Clean Water Act, the Clean Air Act, and the Coastal Zone Management Act.

So the first issue I wanted to discuss as to why this legislation isn't necessary relates to the delays, and from our perspective it is not clear that these state and federal permits are holding up the process. The way the INGAA has defined delay in its 2012 report that it commissioned is a situation where a state or federal permit is not completed within 90 days after FERC completes its environmental review. But there are many reasons for why this can happen. And first of all, the processes are not always properly aligned. So a company may not initiate the state permitting process until several months after it started the FERC certificate process, and that can lead to a misalignment at the end. In addition, state agencies also have—the statutes provide them with a year, in some instances, to act on a permit. So if you start the process late, it is going to run over at the end.

The second issue related to delay is that many times a delay may occur because there is a change in the root, or a different alternative is proposed down the line. And there are instances where a company knows about this initially, but rather than trying to accommodate and negotiate that issue, they will hedge their bets and figure that if they ignore it, it will go away. And it comes back to bite them at the end of the process. I have been involved in at least two proceedings where issues raised by state agencies early on in pre-filing were ignored for years later, and when it finally came time to issue the permit, and it appeared that the state permit wasn't going to issue, those issues had to be dealt with and it created some delay.

And last, as I mentioned, to the extent that there is delay, there is a mechanism that Congress put in place 10 years ago; the ability to bring suit in District Court. I would respectfully disagree with my colleague, Mr. Santa, as to the difficulty of this. It has been used twice. I was involved, representing interveners in one of those proceedings. It is extremely expedited, it is about 3 months, and the company in this particular situation received relief very quickly. And even with this expedited schedule, I, representing a group of landowners, was still able to participate. So that is an option that is highly underutilized, and suggests to me that perhaps companies don't believe that they have enough of a case to be able to bring to court to show delay. And so they are not using this provision because it isn't as necessary as has been suggested.

As I mentioned before, really from our perspective, the most troubling aspect of the legislation is it seeks to eliminate delay really be eliminating differing perspectives. For example, one of the provisions that has been discussed is that, when making a decision with respect to federal authorization, the federal and state agencies shall defer to FERC's scope of the environmental issues. And this is very troubling because state agencies and federal permitting agencies have different mandates. They evaluate different things in the environmental process. And you will sometimes see that they may be identifying issues that FERC considers not relevant to the certificate process. And that makes sense, but these are different mandates. So we don't see that there is any justification to compel a federal or federally backed agency to subordinate its regulatory mandates to the goals of the Natural Gas Act, and indeed, we can't think of any other federal industry or federally regulated industry that has been granted a similar trump card.

So those are some of the concerns that we have, and I look forward to participating in the rest of this hearing. Thank you.

[The prepared statement of Ms. Elefant follows:]

Before theUnited States House of Representatives
Committee on Energy and Commerce
Subcommittee on Energy and Power

Regarding Discussion Draft Addressing FERC Process Coordination Under the Natural Gas Act

Testimony of the Pipeline Safety Coalition | Email: contact@pscoalition.org
(484) 340-0648 | http://www.pscoalition.org/

Presented by Carolyn Elefant, Board Member, Pipeline Safety Coalition/Owner, Law Offices of Carolyn Elefant PLLC

Chairman Whitfield, Ranking Member Rush and Members of the Subcommittee:

Thank you for the opportunity to provide testimony to the subcommittee this morning. My name is Carolyn Elefant and I am a Board Member of the Pipeline Safety Coalition. The Coalition is a non-profit organization which serves as a clearinghouse for factual, objective information to increase public awareness and participation in the pipeline permitting process through education and improves public and environmental safety in pipeline issues. In addition to my service on the Board of the Pipeline Safety Coalition, as an attorney in private practice, I represent landowners, conservation trusts, farms and small businesses and local governments in FERC pipeline certificate process and eminent domain proceedings, and in that capacity, I have gained familiarity with the concerns of stakeholders directly impacted by the pipeline process.

My testimony today will highlight the Coalition's concerns regarding the draft legislation, which would require federal and state agencies with permitting authority over pipelines to adhere to deadlines established by FERC. First, the Coalition believes that the proposed legislation is unnecessary. There is little evidence to suggest that state and federal permitting agencies are responsible for delays in the development of pipeline infrastructure; the extent that they are, companies already have the right under the Natural Gas Act, as amended by EPact 2005 to bring suit at the D.C. Circuit Court of Appeals to compel a dilatory federal or state agency to act on a permit.

Second, the Coalition is concerned that proposed legislation's approach to expediting the permit process - such as requiring federal and state permitting agencies to confine the scope of their environmental review to those issues identified by FERC - would subordinate the regulatory mandates of FERC's sister federal agencies as well as and state agencies implementing delegated authority under the CWA, CAA and CZMA to the goals of the Natural Gas Act.

I. The Proposed Legislation Is Unnecessary

Although the Natural Gas Act preempts most state and local permit requirements, pipelines must still obtain certain federal authorizations, as well as state permits issued through delegated federal authority under the Clean Air Act, Clean Water Act and Coastal Zone Management Act. As amended by EPAct 2005, federal and state permitting agencies must issue any required

authorizations within 90 days of FERC's issuance of a final environmental document.

The sole source of evidence that federal and state authorizations delay the certificate process comes from a 2012 study commissioned by INGAA (Interstate Natural Gas Association of America).[1] The INGAA report defines a federal or state authorization as delayed when it issues after the 90 day deadline enacted by EPAct 2005. Applying this definition, the INGAA report found that delays for federal authorizations post-EPAct 2005 in approximately 19 percent of certificate proceedings.

However, merely because a federal or state authorization issues after the 90 day deadline does not necessarily mean that the project itself is delayed. For certain authorizations, such as those issued under the Clean Water Act, an agency has up to one year to act. If an applicant does not initiate a federal permit process until several months after filing a certificate application (which is a fairly common occurrence) the agency may still have time to act on the application under its enabling statute even though the 90-day deadline may have passed. In this scenario, it is inaccurate to claim that the agency has delayed.

Other times, delays result because pipeline applicants fail to provide permitting agencies with sufficient information to enable the agency to make an

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[1] *See Expedited Authorization of Natural Gas: Are Agencies Complying With EPAct 2005*, INGAA (December 2012) at 12, online at http://www.ingaa.org/Foundation/Foundation-Reports/EPAct2005.aspx.

informed decision on the application. In these circumstances, the agency must wait until the applicants provide the information in order to act.

In this regard, many federal and state permit process differs significantly from the FERC certificate process. Whereas many federal and state agencies collect all relevant information in support of an application before initiating review, FERC accepts applications in piecemeal fashion. A review of any FERC pipeline docket shows that even after the year-long pre-filing process, and even after submitting a full application, a pipeline applicant typically supplements its application on a monthly or even weekly basis over a period of three to six months. These constant filings interfere with stakeholders' ability to meaningfully participate because they are forced to comment on an constantly changing proposal. To the extent that the proposed legislation seeks to impose deadlines for agency action, it should also impose deadlines on applicants for submission of all information necessary to enable FERC, state and federal agencies and the public to review and evaluate the proposed project as well.

On other occasions, a project may be delayed because an applicant hedges its bets and ignores initial feedback from state or federal permitting agencies (for example, to re-reroute the project or conduct additional environmental studies), figuring that it can defeat these requirements during the permit process. If ultimately, the agency prevails, the applicant may need to make changes that could delay the project - even though those delays could have been avoided had the applicant not resisted the agency's feedback to begin with.

The proposed legislation attempts to address this situation by requiring an agency to identify these conditions early on, and provides for a process, mediated by FERC to resolve these disputes. Yet this added procedure is unnecessary as well since there is no reason why the applicant cannot work with federal and state agencies, under the existing licensing framework, to resolve these issues earlier rather than later.

Still, perhaps the most compelling evidence that the problem of federal and state permitting delays have been exaggerated is the fact that one of the enforcement tools to compel agency action has been used only twice in the past decade. As part of the EPact 2005 amendments to the Natural Gas Act, Congress added a provision allowing an applicant to bring a civil action for review of a federal or state agency's failure to take action on a permit required by federal law (other than the Coastal Zone Management Act). See 15 U.S.C §717r(d)(2). Although the D.C. Circuit reviews these "failure to act" cases on an expedited basis and the process for bringing suit is relatively simple, this provision of the Natural Gas Act has been invoked just twice in the ten years since its adoption.[2] That pipeline companies have declined to take advantage of this statutory enforcement mechanism suggests that the companies themselves do not view the

[2] *Dominion Transmission v. Summers*, No. 13-1019 (D.C. Cir. Jul. 19, 2013)(finding Maryland Department of Environment improperly withheld action under Clean Air Act); *Weaver Cove v. Rhode Island*, 524 F.3d 1330 (D.C. Cir. 2008)(finding state's delay under Clean Water Act moot since certificate is deemed waived).

delays as serious enough to rise to the level of relief afforded by the Natural Gas Act.

II. The Legislation Will Subordinate The Regulatory Mandates of Other Federal Agencies to the Natural Gas Act.

From the Coalition's perspective, the most troubling aspect of the proposed legislation is that it seeks to eliminate delay by eliminating differing perspectives. For example, one provision states that "When making a decision with respect to a Federal authorization, each Federal and State agency shall give deference to the maximum extent allowed by law, to the scope of environmental review that the Commission determines to be appropriate." Requiring federal and state agencies to abide by this requirement would substantially encroach on their regulatory discretion.

For example, to date, FERC has taken the position that it need not address the cumulative impacts of Marcellus Shale tracking in pipeline cases because the impacts are remote and not causally connected.[3] However, another federal or state agency might find consideration of these impacts relevant to its statutory mandate. There is no justification to compel a federal, or federally-backed state agency to subordinate its regulatory mandate to the goals of the Natural Gas Act - and indeed, we can think of no other federally-related industry that has been granted a similar "trump card."

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[3] *See Coalition for Responsible Growth and Resource Conservation v. FERC*, No. 12-566 (2nd Cir. 2012) (affirming FERC's decision declining to consider cumulative impacts of Marcellus Shael in pipeline certificate process).

III. Conclusion

The current regulatory process for gas pipeline certificates is far from perfect. Landowners, whose property may be directly impacted by pipelines and is subject to taking by eminent domain, are often unable to afford legal representation to participate in the FERC certificate proceeding or to defend their property in an eminent domain proceeding. Much of the information filed at the Commission is classified as critical energy infrastructure information (CEII) or privileged and is not readily or immediately accessible by intervenors and their representatives, even if they are willing to sign a non-disclosure agreement. In contrast to the electric utility industry, there is no regional planning in the gas industry - and it is difficult to assess whether all of the infrastructure currently proposed is necessary. If the Natural Gas Act is to be amended, all of these issues must also be addressed.

Thank you for the opportunity to present this testimony. I welcome any questions that the sub-committee may have.

Mr. WHITFIELD. All right, thank you very much, Ms. Elefant.

At this time, our next witness is Mr. John Collins, who is the Managing Director of Business Development at Cube Hydro Partners. You are recognized for 5 minutes, Mr. Collins.

STATEMENT OF JOHN COLLINS

Mr. COLLINS. Good morning, Chairman Whitfield, Ranking Member Rush, and distinguished members of the subcommittee. My name is John Collins, and I am the Managing Director of Business Development for Cube Hydro Partners, a small, women-led business that owns and operates hydroelectric plants in several states. The company also engages in new hydropower development through the building of new plants at existing dams. I have over 25 years of experience in the energy industry, including previous experience in the development of over 3,500 megawatts of merchant power natural gas-fired plants during my career at Constellation Energy. I spent over 22 years with Constellation Energy Group in various leadership positions, including Chief Risk Officer, Chief Financial Officer, and Senior Vice President of Integration. I am pleased to have the opportunity to appear before you this morning to discuss the importance of modernizing and improving the hydropower licensing and relicensing process to make it more efficient and transparent, while supporting environmental protections.

Cube Hydro's current portfolio of hydrogenation assets consist of 13 plants that comprise over 106 megawatts. The company is committed to developing, owning, and operating hydropower facilities across the United States. We are actively pursuing the potential development of new projects on existing dams.

The National Hydropower Association and the Oakridge National Laboratories cite the potential to retrofit more than 54,000 dams in the United States, bringing more than 1,200 megawatts of new renewable energy onto the grid, while creating hundreds of thousands of new jobs, and mitigating 40 million tons of greenhouse gas emissions annually. These opportunities are tremendous. However, the length, expense, and uncertainty of the hydro licensing approval process significantly disadvantages development. Licensing can extend for nearly a decade, and such a long, protracted, and uncertain regulatory process hampers investment by increasing regulatory risks, financial risks, and implementation risks, thus, driving up the cost of new hydropower at existing dams. The time and energy to secure the licenses and permits contributed to development costs that can be between 25 and 30 percent of the overall cost of the project.

Cube Hydro experienced these regulatory challenges firsthand while developing its 6 megawatt Mahoning Creek Hydroelectric Project in western Pennsylvania. The overall regulatory process for the project spanned almost 10 years, causing significant difficulties in obtaining financing, and securing a long-term power purchase agreement. Although the end result is and continues to be a success story, the development process was a significant challenge.

To facilitate hydropower development, the regulatory process should be streamlined to eliminate redundancies and provide developers and investors with added certainty. Removing duplication in the process, and placing a single agency in charge of managing the

entire approval process is needed. Such accountability is an essential attribute of efficient management and good government. The implementation of a streamlined regulatory process also needs to look to standardize the requirements associated with issuing a license to eliminate any competing requirements. We are particularly supportive of the provisions that will minimize duplications of studies and license proceedings, simplify the regulatory process for smaller projects, authorize new studies only when the FERC determines that additional data is necessary, weigh the cost-benefit analysis of licensing requirements, implement a use-it-or-lose-it provision for submitting a pre-application document within 3 years, as opposed to the current system which allows up to 8 years without developing the project. The end result is the establishment and enforcement of project timelines. These and other initiatives would help to simplify licensing requirements, and facilitate hydropower project development and relicensing. We believe that hydropower is, and should remain, an important component of and environmentally sustainable U.S. energy policy. Providing the ability to invest private capital to upgrade, modernize, and stabilize this resource is critical to maintaining and growing the currently installed base, which is the largest of any renewable resource in the United States. Hydropower is clean, renewable base load energy that helps to stabilize our electric grid. Federal policies should be adopted to encourage the development of this vast resource. Cube Hydro believes the draft legislative proposals under consideration by the subcommittee today are a reasoned and responsible modernization of federal licensing legislation to allow for increased development of this important resource.

I thank the subcommittee for this opportunity to testify on hydropower's role in meeting our nation's energy and economic objectives, and look forward to answering your questions.

[The prepared statement of Mr. Collins follows:]

U.S. House Subcommittee on Energy and Power

Discussion Drafts Addressing Hydropower Regulatory Modernization and FERC Process Coordination under the Natural Gas Act.

May 13, 2015

Written Testimony of

John R. Collins, Managing Director of Business Development,

Cube Hydro Partners, LLC

Executive Summary

- Cube Hydro Partners' current portfolio of hydropower generation assets consists of 13 hydropower facilities that comprise over 106 MWs. The company is committed to developing, owning and operating hydropower facilities across the United States and is actively pursuing the potential development of new hydropower projects on existing infrastructure. This is a tremendous opportunity. A recent study by the Oak Ridge National Laboratories cites the potential to bring more than 12,000 MW of new renewable energy onto the grid at existing non-powered dams while creating hundreds of thousands of new jobs and mitigating 40 million tons of greenhouse gas emissions annually.
- The length, expense and uncertainty of hydro licensing significantly disadvantage its development. Licensing can extend for nearly a decade, and such a protracted and uncertain regulatory process hampers investment by increasing regulatory, financial, and implementation risks, thus driving up the cost of new hydropower at existing dams.
- In the hydropower sector, securing development, construction and project financing is extremely challenging. The length of the licensing the process makes the investment financially too risky. Time is money. These licenses and permits contribute to development costs being 25-30% of the overall project cost. We experienced these immense regulatory challenges first-hand while developing the 6 MW Mahoning Creek Project in Pennsylvania.
- To facilitate hydropower development, regulatory processes should be streamlined to provide developers and investors with added certainty. Removing duplication in the process and placing a single agency in charge of managing the entire approval process is needed.
- The Federal Energy Regulatory Commission (FERC) should also consider a "use it or lose it" approach to permitting and licensing so facilitate successful hydropower development.

Introduction

Good morning, Chairman Whitfield, Ranking Member Rush, and distinguished members of the Subcommittee. My name is John Collins, and I am the Managing Director of Business Development for Cube Hydro Partners, a small woman-led business that has hydropower operating assets in five states. The company also engages in new hydropower development through the building of new hydropower facilities at existing dams.

I have over 25 years of experience in the energy industry, including previous experience in the development of over 3,500 MW of merchant power natural gas-fired plants during my career at Constellation Energy. I spent over 22 years with Constellation Energy Group in various leadership positions, including Chief Risk Officer, Chief Financial Officer, and Senior Vice President of Integration.

I am pleased to have the opportunity to appear before you this morning to discuss the importance of modernizing and improving the hydropower licensing and relicensing process to make it more efficient and transparent, while supporting the environmental protections.

Cube Hydro Partners' Commitment to Clean, Renewable Hydropower Development

Cube Hydro Partners is committed to developing and owning hydropower facilities across the United States, and we are actively pursuing the potential development of new hydropower projects in North America. Our current portfolio of hydropower generation assets consists of 13 hydropower facilities that comprise over 106 MWs. This includes the 6 MW Mahoning Creek Hydroelectric Project, located in Western Pennsylvania, which we completed construction of and commenced commercial operations in December 2013. The Mahoning Creek Project was the first new hydroelectric project built in Pennsylvania in more than 25 years at a U.S. Army Corps of Engineer (USACE) dam (and post-Hurricane Katrina). The project

created approximately 100 new jobs during construction and is a clean, carbon-free electricity resource located at existing infrastructure that provides more than 20,000 MWhs to families and businesses each year. Although the end result is a success story, Cube Hydro Partners faced immense regulatory challenges in getting to this point. We are here today to support, in principle, many of the proposals in the draft legislation which eliminate duplication and streamline the regulatory process because the challenges we faced—detailed later in this testimony—are pervasive within our industry and often result in abandonment of good, feasible projects. Cube Hydro Partners believes that the legislative improvements embodied in the draft bills are desperately needed to create a regulatory environment that supports more success stories like ours.

Cube Hydro Partners currently holds preliminary permits for 5 possible hydroelectric development projects, comprising approximately 24 MW with an expected 100,000 MWhs of annual generation. The development of new hydropower generation is an important part of our overall business strategy and is an important component of meeting our country's goal of a less carbon intensive economy. In our experience, our customers greatly value new, reliable and clean hydropower—and we believe the American people also value these principles. The draft bills under discussion today, if enacted, would go a long way to increasing our reliance on domestic, renewable resources and moving our economy forward in an environmentally responsible manner.

Growth Potential for Hydropower

Because hydroelectric power is a clean, renewable, baseload energy that helps to stabilize our electric grid and is a resource that is highly valued by electric grid operators, as well as

electric customers. Hydro has the benefit of being a baseload resource – rather than variable wind or solar – which provides more stability to the electric grid. Hydropower also provides other ancillary services to the grid such as regulation, spinning reserves and black start capability that can be used to help integrate other renewable resources.

Although hydropower development is site-specific meaning, certain conditions of potential energy relative to development cost must be present at any potential site, there remain strong growth opportunities for hydropower in the U.S. In the lower 48 states, the majority of this potential has the added benefit of being located at existing dams, which are in operation for a specific purpose, such as flood control, water supply for surrounding communities, recreation and navigation. The National Hydropower Association, for example, has estimated that of the approximately 80,000 dams in the U.S., only 3 percent produce electricity. This is not to say that each dam meets the specific conditions required to feasibly develop hydropower, but according to a 2012 Department of Energy report, adding power to non-powered dams has the potential to add up to 12,000 MW of new renewable energy capacity — enough to power nearly 4 million American homes. Eighty-one of the top 100 non-powered dams are owned by the U.S. Army Corps of Engineers (USACE), and could produce thousands of additional MWs. If we retrofit these dams with hydropower and upgraded and modernized the USACE owned and operated fleet, we estimate that we could produce enough incremental clean electricity to supply the electricity demand of the US federal government. The opportunities are tremendous.

Hydropower Is Disadvantaged by Regulatory Processes

The licensing of hydroelectric power generation is governed by the Federal Power Act (FPA), which was originally enacted nearly 100 years ago for the express purpose of

encouraging development through a single regulatory body, instead of a cadre of federal and state authorities, which at the time stymied development. While the FPA provided for inputs and considerations of other regulators, Congress at the time understood the need for the regulatory regime to operate under a single, consistent license regime administered by a single agency.

Of course, much has happened since the original passage of the FPA. Modern environmental requirements, such as the Clean Water Act and Endangered Species Act understandably require the involvement of regulatory agencies in addition to the Federal Energy Regulatory Commission (FERC) in the hydropower licensing process. These inputs are necessary in our modern regulatory regime, and the hydropower industry has done its part to protect, mitigate damages to, and enhance aquatic and terrestrial resources that we all value. Nonetheless, the licensing approval process has been hindered by the current regulatory and licensing processes, resulting in unnecessary delays and numerous approvals by other federal and state resource agencies. These regulatory process costs would be much better served supporting on-the-ground environmental enhancements, or in the hands of families and businesses that are required to pay for their electric service.

Ten years ago, with the passage of the Energy Policy Act of 2005 (EPAct 2005), Congress reached a significant compromise that was intended to address many of these problems and promote hydropower development in a manner that protects non-developmental resources. EPAct 2005 contemplated greater input by license applicants—relying upon their expertise in managing and developing their projects—in crafting solutions to critical environmental management objectives. The Act promoted greater certainty in key factual issues justifying environmental measures, which often undermine project economics, through trial-type hearings.

And it charged all resource agencies to exercise their considerable authorities in a manner that equally considers both developmental and non-developmental values.

Unfortunately, in real life, many of the contemplated efficiencies and trade-offs either have not been implemented or are not producing the intended results of promoting new hydropower development. The length, expense and uncertainty of the hydropower licensing and approval processes continue to place hydropower at a significant disadvantage compared to other renewable resources. The FERC licensing process can take up to a decade to complete, which often just leads to the next required federal permit or approval. These lengthy, protracted and uncertain regulatory processes unquestionably hamper investment by increasing regulatory risks, financial risks, and implementation risks, thus driving up the cost of new hydropower, and making it much less attractive for investment.

For new project developers like Cube Hydro Partners, securing financing—money to pay for all the work required before the first shovel even hits the ground—is an essential part of our business. And although all energy projects face this same challenge, hydropower licensing and permitting requirements place this resource at a distinct and significant disadvantage. Factors such as a 10-year approval process for licenses and permits, and permitting costs can be as much as 25 to 30 percent of the overall cost of the project which often times make the financial investment too risky. Investors are simply—and understandably—unwilling in many cases to take the risk, for the following reasons:

- *Time Value of Money.* The lengthy process itself adds additional costs to the project. It would be helpful to limit the time that a developer has to file a preliminary application document (PAD) to a maximum of three years. This "use it or lose" provision would allow developers who are serious about the process to have

opportunities to build at non-powered dams. Currently entities can collect permits and tie them up for eight years before they even break ground on a project.

- *Delayed Income Stream.* The high up-front costs for hydropower, together with the lengthy licensing and permitting processes, delay a revenue source, and recapture on investment, for many years.
- *Views of Investors.* Developers are facing significant financial challenges to find investors who are willing to invest in hydropower, due to the high cost, regulatory risks, and delayed return on investment. While investors do consider the merits of hydropower (e.g., low fuel costs, low operational costs over time), investors also weigh the shorter term risks when deciding where to invest capital.
- *Power Purchase Agreements.* Regulatory uncertainty and the ever-present risk of project delays make it difficult to acquire power purchase agreements (PPA) for the sale of power from the plant, as potential off-takers are reluctant to sign up for long-term agreements for uncertain projects. The failure to obtain a PPA, in turn, inhibits a developer's ability to obtain project financing creating a vicious cycle that has caught many proposed hydropower projects.

Cube Hydro Partners greatly appreciates the support and hard work of federal and state employees in assisting with hydropower development efforts. We understand and are committed to responsible environmental stewardship. But the system is not working—for both the developers and the regulatory employees. In too many cases, the investment risk has become too high, making it difficult or impossible to continue with the project long-term. Too many good

projects have collapsed under the weight of an outmoded, inefficient, and expensive regulatory process.

The effects of the process can easily be seen in the numbers: according information we analyzed from FERC's database, between 2010 and 2013, 358 preliminary permits for the development of hydropower projects were issued for a total of approximately 60,000 MW. During that time period, only 27 new FERC licenses were issued for a total of 143 MWs, and only 11 projects were placed into service for a total of 60 MWs. And while proposed projects fail for any number of reasons, the attrition rate is alarming.

The view from the ground: A Case Study on the Mahoning Creek Project

Cube Hydro Partners' experience in developing the Mahoning Creek Project (Project) provides a telling example of the effects and challenges of today's licensing scheme. The overall regulatory approval process for the Project spanned almost 10 years from the date the preliminary permit application was submitted in October 2004 to the date the project received its final federal and state permits in March 2013. Given the length of time and the uncertainty of receiving the final license and permits, it was extremely difficult for the Project to secure a PPA with a third party to sell the plant's output, as any contracting party would want assurances that the Project will actually get built and have some idea of when they can expect to begin to receive power generated from the plant. Furthermore, while the FERC license for the Project was issued in March 2011, that license did not settle the regulatory risks associated with developing the project, as the Project still required approval from USACE and agencies of the Commonwealth of Pennsylvania. These final approvals and resulting permits, which included additional environmental requirements, were not received until March 2013.

During this lengthy process of receiving final regulatory approvals, the market for electricity changed dramatically, which resulted in further financial challenges. By the time the Project received its final permits, electricity prices had decreased significantly, which further magnified the financial risk of the Project and made it even more challenging to find a long-term buyer for the plant's generation. In fact, Cube Hydro Partners was unable to finalize the PPA until May 2013 when the plant was under construction.

Need for Improvement

In Cube Hydro Partners' view, problems like those experienced at Mahoning Creek Project (which was at a risk of abandonment during the process) — and many more like it across the U.S. — can and should be avoided in the future. To do this, FERC should be empowered to establish and enforce an overall schedule for all required authorizations under federal law for hydropower development. Federal and state resource agencies should cooperate in the environmental review to eliminate redundancies and provide developers and investors with added certainty. The careful balance of managing developmental and environmental values achieved in EPAct 2005 should be restored.

The draft bills under consideration today could fix these problems and go a long way to promoting our nation's largest source of clean, renewable energy — by a large margin. Removing duplication and implementing schedule discipline would save time and money. Requiring accountability is an essential attribute of efficient management and good government. Empowering FERC to manage the entire process and remove uncertainties and conflicts in license requirements would reduce risks and promote investment.

Cube Hydro Partners faced numerous and considerable challenges while completing the Mahoning Creek Project. As the United States continues to increase our reliance on domestic, renewable energy resources, future hydropower developers — including Cube Hydro Partners — should not be subjected to a process that itself stymies development. Cube Hydro believes that the legislation under consideration by this Subcommittee could greatly improve the process. We are particularly supportive of the provisions that would:

- Minimize duplication of studies in license proceedings;
- Simplify the regulatory process for smaller projects;
- Authorize new studies only when FERC determines that additional data is necessary;
- Weigh the cost-benefit analysis of licensing requirements
- Implement a "use it or lose" provision for submitting a PAD within three years, thus establishing and enforcing project timelines.

These, and other initiatives, would help to simplify licensing requirements and facilitate hydropower project development. We believe that hydropower is an important U.S. infrastructure and providing the ability to invest private capital to upgrade, modernize and stabilize this resource is critical to maintaining the currently installed base which is the largest of any renewable in the U.S. In our view, the legislation before the committee is about accountability in administering laws which make the production of renewable hydroelectricity possible, while properly balancing the environmental interests of stakeholders.

It should also be noted that the hydropower industry has a large number of small business operators and developers. The current regulatory regime does not take into account the disproportionate financial costs that small hydro operators and developers incur. While

Congress implemented some changes two years ago to streamline very small hydro projects from some regulatory oversight, much more needs to be done.

Conclusion

Hydroelectric power is a clean, renewable, baseload energy that helps to stabilize our electric grid. There is strong growth opportunity for hydropower in the U.S., primarily at existing infrastructure. Federal policies should be adopted to encourage the development of this vast resource, and a modernization of the FERC licensing process is needed to do so.

Cube Hydro Partners believes the draft legislative proposals under consideration by the Subcommittee committee today are a reasoned, and responsible, modernization of federal licensing legislation to allow for increased development of this important resource.

I thank the Subcommittee for this opportunity to testify on hydropower's role in meeting our nation's energy and economic objectives and look forward to answering your questions.

Mr. WHITFIELD. Well, thank you, Mr. Collins.

And our next witness is Mr. Richard Roos-Collins, who is General Counsel for the Hydropower Reform Coalition, and Principal in the Water and Power Law Group, and he is testifying on behalf of the Hydropower Reform Coalition. So you are recognized for 5 minutes, Mr. Collins.

STATEMENT OF RICHARD ROOS-COLLINS

Mr. ROOS-COLLINS. Thank you, and good afternoon, Mr. Chairman, ranking minority members. My name is Richard Roos-Collins. I appear on behalf of the Hydropower Reform Coalition.

Our conservation groups represent two million people who fish, boat, and hike on the lands and waters of these hydropower projects. Since 1992, our coalition has reached 170 settlement agreements with licensees, including Pacific Gas and Electric, and also New York Power Authority. We worked with the National Hydropower Association and other stakeholders to negotiate the 2005 integrated licensing process which FERC uses, and the 2013 Hydropower Regulatory Efficiency Act.

We support the goal of expedited licensing consistent with the quality of the license. We do not support specific mechanisms in the discussion draft that would undercut cooperation between FERC and other agencies.

Under the draft, FERC would control the schedule for the work of other agencies, determine facts relevant to fishways and federal reservations, and exclusively administer a license once issued. This would disrupt the cooperative approach that has succeeded under the Federal Power Act since 1935. Section 10(a) of that Act requires that each license must be best adapted to a comprehensive plan for power, flood control, water support, fish, and recreation. This mandate is achieved through cooperation. FERC determines overall how to advance the public interest, and it issues the license. Other agencies write specific articles for fishways, federal reservations, and water quality. FERC and those other agencies work hard to manage the tradeoffs between competing uses of waters, looking out two generations. In the modern era, licenses have increased power capacity by 4 percent, relative to the original licenses, and are providing billions of dollars of regional economic benefits associated with non-power uses. At one project alone, recreation, including family recreation, will produce more than $330 million in such benefits over the next 30 years.

Now, let me turn to time. A licensing process is expected to take 5 years or less. Why that period? The license is based on the studies conducted to evaluate how best to manage trade-offs over two generations. Should licensings end on time? Yes. And, in fact, most do. Are some licensings delayed today? Yes. Roughly ¼. Do delays occur merely because agencies, other than FERC, write license articles? No.

Let me give an example. Under the 2005 Energy Policy Act, the federal agency that prescribes a fishway must provide a trial on disputed issues. These trials have consistently ended on time; 6 months or less. The assigned judges did this by knocking heads. Section 1303 of the discussion draft would move these trials to

FERC. Would that save time? No. It would just transfer the authority to resolve those triable issues.

We support commonsense mechanisms that save time and money by improving coordination between FERC and other agencies. Cut red tape? Yes. So let me make four suggestions.

First, there should be a joint environmental document in each licensing. Today, there tend to be several. That is because FERC requires an agency cooperating in FERC's own document to forego the right to be a party. Faced with that catch 22, states tend to prepare their own documents for their water quality certifications. Half of the delayed licensings are in California, and that is largely why.

Second, a joint study plan should provide the information necessary for all license articles.

Third, there should be a comprehensive schedule, and an agency dragging its feet should be subject to a judicial mandate.

And lastly, we support the procedure used by former FERC Chair, Pat Wood, in the early 2000s. He held an annual hearing solely to address delayed licensings. He grilled his staff and parties alike to isolate and fix causes for delay. The backlog shrank very quickly.

We are committed to work with this committee, industry, agencies, and other stakeholders to develop reforms that expedite licensings consistent with the public interest in enhancing power and other beneficial uses of our nation's waters.

Thank you for the opportunity to testify. I look forward to your questions.

[The prepared statement of Mr. Roos-Collins follows:]

U.S. House of Representatives
Committee on Energy and Commerce
Subcommittee on Energy and Power

Hearing on
Discussion Drafts Addressing Hydropower Regulatory Modernization and FERC Process Coordination under the Natural Gas Act

May 13, 2015

Testimony of Richard Roos-Collins
Principal, Water and Power Law Group PC
General Counsel, Hydropower Reform Coalition

Chairman Whitfield, Ranking Member Rush, and Members:

I am Richard Roos-Collins, appearing on behalf of the Hydropower Reform Coalition. Thank you for this opportunity to testify on the discussion draft of the bill, "Hydropower Regulatory Modernization."

The Hydropower Reform Coalition (HRC) represents nearly 2 million people who fish, hunt, boat, and otherwise enjoy the lands and waters of hydropower projects. Formed in 1992, our member conservation groups[1] have signed more than 170 comprehensive settlement agreements with licensees.[2] We contribute sweat equity to the implementation of the settlement terms. We hold recreation events, maintain wildlife habitat, and undertake scientific monitoring and other tasks in cooperation with licensees. We negotiated with industry and agencies to develop the Integrated Licensing Process, the primary process used by the Federal Energy Regulatory Commission (FERC) since 2005. We have developed and supported reform legislation, including the Hydropower Regulatory Efficiency Act of 2013.

The HRC supports the goal behind this discussion draft: saving time and money in hydropower licensing proceedings. We strongly oppose certain mechanisms proposed in the draft. Let me explain.

In the 1935 amendments to the Federal Power Act, Congress required that every license must be best adapted to a comprehensive plan for all beneficial uses of the basin. These include power, flood control, water supply, fish and wildlife, and recreation. This mandate is remarkable and right, today as then. It recognizes the uniquely important and complex functions of water.

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1 We represent 160 non-governmental organizations throughout the nation.

2 The projects subject to these settlements have 11,215 megawatts (MW) of capacity.

The Federal Power Act is not just about generation of electrical power. It deliberately advances other beneficial uses.

The statute is implemented through cooperative decision-making. FERC makes the ultimate decision whether to license a project, and how to serve the public interest. Other federal and state agencies with unique expertise and authorities in non-power uses, such as fish passage and water quality, develop license articles specific to those uses.

In early decades, licenses were mostly bilateral efforts between applicants and the Commission. That changed as a result of regulatory programs under the 1965 Fish and Wildlife Coordination Act, 1969 National Environmental Policy Act (NEPA), 1972 Clean Water Act, 1973 Endangered Species Act, and other modern statutes that apply generally to all federal actions affecting navigable waters. In the modern era, the agencies that administer these laws have been increasingly active in relicensing as original licenses expired.

The cooperative federalism enhances the public benefits of hydropower. During the modern era, new licenses have increased the power capacity of projects by 4% and have provided many billions of dollars in regional economic benefits associated with better fisheries and recreation.[3] This success reflects the integrated expertise of FERC and other regulatory

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[3] In 2001 FERC surveyed the time and cost of relicensing proceedings from 1986 – 2000. It found that new licenses reduced power generation by 1.6%, and increased generation capacity by 4%, relative to original licenses. *See* FERC, *Report on Hydroelectric Licensing Policies, Procedures, and Regulations: Comprehensive Review and Recommendations Pursuant to Section 603 of the Energy Act of 2000* (2001), p. 50. This appears to be FERC's most recent review of such time and cost.

We reviewed environmental documents and other evidence in the record of licensing proceedings, to provide this rough estimate of the economic benefits associated with recreation, commercial fisheries, and other non-developmental uses. We are not aware of any survey by FERC on this topic.

agencies. The Federal Power Act is based on the principle, and this experience confirms the wisdom, that any one agency in Washington, D.C., even one as competent as FERC, does not have the on-the-ground knowledge necessary to optimize a license for all such water uses.

This draft bill would disrupt this cooperative federalism. FERC would set the schedule for other agencies' work during a licensing proceeding. It would make the final call on disputed factual issues relevant to Commerce, Interior, and Agriculture Departments as they develop their articles for fishways and federal reservations, respectively. A state's water quality certification would no longer be subject to appeal in state court. After license issuance, FERC would have exclusive authority to amend, enforce, and administer all articles, even those that are integral to regulatory programs (such as a water quality control plan) administered by these other agencies.

Centralizing licensing authority would not enhance the quality of the licenses themselves. Since 2011 certain witnesses before Congress[4] have argued for fewer cooks in the kitchen, to cut time and cost. We agree that the relicensing process should generally take 5.5 years (as anticipated by the statute)[5] or less, not more. We agree that the cost to the licensee and its customers should not exceed what is necessary for an informed decision.

Cut red tape? You bet. Which red tape?

This bill proposes to amend certain procedures, ostensibly to cut time and cost. For example, Section 1303 addresses the trial-type hearing that the 2005 Energy Policy Act requires

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[4] Before this and the House Natural Resources Committee.

[5] The Federal Power Act does not set a hard deadline for a relicensing proceeding. However, by requiring a notice of intent 5 to 5.5 years before the expiration of the original license, the statute creates an expectation that the proceeding will end roughly within that timeframe. *See* 16 U.S.C. § 808(b).

on disputed issues of fact related to fishways.[6] How much red tape is in this hearing procedure? Three trials have occurred since Congress adopted this procedure in 2005.[7] All met the statutory deadline of 180 days. The Administrative Law Judges assigned by the agencies have been tough and fair. In one proceeding on a fishway article, the pre-trial conference was over in a few minutes. The judge started by saying that he would not tolerate unnecessary argument on the pending motions. The licensee, prescribing agency, and other parties rested on their pleadings. The judge then decided pending motions on the spot. This no-nonsense approach motivated prompt settlement of the issues otherwise set for trial. Transferring such authority from an agency's judges to the Commission, as proposed in Section 1303, would not speed-up such trials or the final licenses.

We support practical reforms to expedite relicensing of existing projects. We ask: what has actually caused some proceedings to slow to a crawl, while many others have keep to the expected schedule of 5.5 years or less?

In the early 2000's, Pat Wood, who was President Bush's appointee as FERC Chair, held an annual oversight hearing to address delayed relicensings. He asked his staff, other agencies, licensees and other stakeholders, to participate. Without assigning blame, he grilled the participants on why they had not completed a given relicensing. He used each hearing to identify specific causes for delay and fix them. This procedure greatly reduced the relicensing backlog during his term. Unfortunately, it is not still being used.

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[6] 16 U.S.C. §§ 797(e), 811.

[7] In 2009 FERC reviewed the implementation of the trial-type hearing procedure in EPAct. At that time, there have been a total of 16 requests for trial-type hearings, and 13 had settled before trial. *See* Testimony of J. Mark Robinson, House Committee on Natural Resources (June 27, 2012), p. 5.

Some recent testimony has broadly traced delays and unnecessary cost to the states who administer Clean Water Act section 401, as well as the federal agencies who administer Endangered Species Act section 7 and Federal Power Act sections 4(e) and 18. This view is unfounded. It disregards the delays caused by applicants who have submitted incomplete studies or untimely responded to information requests. We do not see any hard facts that other agencies are dragging their feet in relicensings as a matter of strategy or competing priorities.[8]

Experience has shown that delays do often result from inadequate coordination between FERC and other agencies in the development of the record. These left hand-right hand issues are fixable under existing law or with modest statutory reform.

First, the NEPA document in a relicensing should be jointly prepared and adopted by FERC (as lead) and the other agencies responsible for license articles.[9] Second, FERC and these

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[8] In June 2012, then-Representative Markey asked FERC for any documentation that relicensing delays since 2005 have been caused by the exercise of conditioning authorities under Federal Power Act sections 4(e) (federal reservations) and 18 (fishways). FERC responded: "Commission staff is unable to provide this information because we do not track the individual conditions filed in each relicensing case. It would be extremely time consuming to gather this information because it would require researching the record for each relicensing since late 2005 as well as any settlement agreement that may have been filed." *See* FERC, "Responses to The Honorable Edward J. Markey" (June 2012), p. 1.

[9] NEPA encourages such cooperation between the lead federal agency and other agencies with relevant jurisdiction. Each cooperating agency reviews or prepares analysis within its expertise. The document specifies issues where the lead and cooperating agencies disagree, and it then states separate findings and conclusions as appropriate on such issues. The joint document thus serves as the record for all related parts of a final decision. *See* 40 C.F.R. § 1501.5 – 1501.6.

It is rare today that other agencies cooperate in a NEPA document for a relicensing. FERC has applied its *ex parte* rule, 18 C.F.R. § 385.2201, to require that a cooperating agency must forfeit its right to become a party, because it will be in a position to receive off-the-record information related to the NEPA document. Most of the time, state agencies will not accept that Catch-22 and thus prepare their own environmental documents. This is a primary driver for the delays associated with water quality certifications.

agencies should develop a joint study plan to provide all new information needed for their respective decisions.[10] Third, they should compile a joint schedule, without FERC's prescribing the specifics for any agency; and early judicial review should be available to correct unnecessary delay.[11]

Let me turn to the topic of original licensing as proposed in Section 1302. We do not support exempting unpowered dams, conduits, and similar facilities from applicable requirements for protection of environmental quality and public safety. We do support retrofitting these facilities in circumstances where the baseline (both in terms of environmental quality or public safety) stays the same or is enhanced. Since all fifty states have such infrastructure, it makes sense to add generating capacity quickly and on a big scale. We are puzzled why so few conduits have been retrofitted under the 2013 statute and FERC's

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A simple fix is that FERC adopt a new policy or practice to encourage a joint document in each relicensing. A cooperating agency will commit that: (a) its separated staff will work with the Office of Energy Projects on the joint environmental document, (b) its other staff will work on its internal deliberations, and (c) these staffs will not communicate about the project. In turn, FERC will agree that the cooperating agency may become a party. We believe that this procedure is clearly permissible under FERC's existing rule. Indeed, FERC used this procedure in the relicensing proceeding for New York Power Authority's St. Lawrence-FDR Project in the late 1990's.

[10] Under 18 C.F.R. § 5.9, an agency may request studies in a licensing proceeding. Roughly 66% of the time, FERC approves these requests. In the other 33%, it declines the requests and directs the agency to use its own authority to obtain a given study. *See* FERC, "Response to The Honorable Edward J. Markey" (June 2012), pp. 1-2. These study plan disputes often cause delays in relicensings. That is because, once FERC says "no," the agency must seek to persuade or compel the licensee to undertake the rejected study, given its obligation (independent of FERC) to have substantial evidence in support of any license article it submits. *See Bangor Hydro-Electric Company v. FERC*, 78 F.3d 659 (D.C. Cir. 1996).

[11] Judicial review of delay, sought during a relicensing, rarely occurs today, although at least one case was brought to challenge FERC's delay in starting ESA consultation. *In re American Rivers and Idaho Rivers United* (D.C. Cir. 03-1122).

implementing rules,[12] which have typically resulted in a final decision only 63 days after an application.[13] We believe that unfavorable terms for grid interconnection and transmission may be a primary driver. We are working closely with small hydropower associations to isolate this and other possible drivers.

The Hydropower Reform Coalition is ready to work with the hydropower industry, agencies, and other stakeholders on effective reforms. We seek practical solutions that expedite licensings and preserve cooperative federalism true to the mandate that each license must be best adapted to all beneficial uses of the affected waters.

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[12] *See* FERC, Order 800 (Sept. 18, 2014), 148 FERC ¶ 61,197 (2014).

[13] Office of Energy Projects, "Briefing on Implementation of Hydropower Regulatory Efficiency Act" (Jan. 16, 2014), p. 5.

Mr. WHITFIELD. Thank you, Mr. Roos-Collins.

And our next witness is Mr. Randy Livingston, who is Vice President of Power Generation, at Pacific Gas and Electric. And you are recognized for 5 minutes.

STATEMENT OF RANDY LIVINGSTON

Mr. LIVINGSTON. Good morning, and thank you.

PG&E is one of the nation's largest combined electric and natural gas utilities, with more than 22,000 employees serving 16 million Californians. We are also the owner and operator of America's largest investor-owned hydro system. With 26 FERC licenses, we are regularly in the process of relicensing, and in fact, today, we have seven projects in one phase or another of relicensing.

Our system generates 3,900 megawatts of safe, clean, reliable, and affordable power for millions of Californians. It has been crucial in integrating other renewable energy sources. In addition, it provides water supply, recreation, flood control, taxes, and other benefits. Hydropower is an invaluable resource. It is one that our country can and should do more to capitalize on.

We appreciate all the efforts done to date by past Congresses to advance hydroelectric generation. We believe this Congress has taken a very important step with the release of the discussion draft on hydropower regulatory modernization, and by holding today's hearing.

PG&E believes it is critical for hydroelectric power generators to be able to move through the relicensing processes more efficiently, more affordably, so we can implement the environmental protections, community improvements, and facility upgrades more quickly than we can today.

We believe the discussion draft accomplishes this fairly and effectively, while maintaining important environmental protections and community interests. In particular, it does this by clarifying FERC's exclusive authority to balance beneficial uses, and to enforce, amend, or otherwise administer all aspects of a FERC license. It improves the licensing process by allowing FERC to establish standards and deadlines for federal authorizations, it clarifies the scope of federal agencies' authority under Sections 4(e) and 18 of the Federal Power Act, and required those agencies to explain the effects of their conditions or prescription on other recognized benefits, such as energy production, flood control, and water supply. And it allows the licensee to seek a review of federal authorization or delay an issuance in the Federal Court of Appeals.

We believe the commonsense and basic reforms can make hydropower more efficient, while keeping in place the environmental protections and other benefits that we all agree are critical.

PG&E places a priority on using collaborative process to relicense a facility, as both understanding and incorporating the interests of stakeholders is critical. However, as it stands today, the current process is complex, protracted, leading to higher costs and delayed implementation of improvements and upgrades. To put this into perspective, PG&E's recent experiences, even for a medium-sized license, it consistently takes over 7 years to renew an existing license for an existing facility, and often well over 10 years. The cost just to complete the process for the continued operation of a

facility can run over $50 million, and implementing the requirements of the new license can run into $100 million. All of these are costs that are ultimately born by the energy consumer.

Relicensing process involves numerous federal and state agencies, and stakeholders with interests that may not always align. Therefore, we believe the process should be improved to focus on the following. Ensure environmental protections and preserve hydropower, achieve the multiple benefits of relicensing sooner, reduce cost, improve predictability, and enhance the collaborative process to be results and solution-oriented, and avoid conflicting license conditions.

We would recommend a number of very specific improvements to address these license—these licensing matters, including improving coordination between federal and state environmental reviews, including an enforced discipline schedule for all parties involved, better defining the extent of authorities by federal agencies, improving federal and state agency coordination and transparency, and finally, by establishing a process for a single challenge opportunity before FERC to resolve issues or conflicting license restrictions. For example, in California, we are working to help our State Water Board environmental review follow a parallel path with the federal reviews, including relying on the same data and studies. To date, even though our State Water Board participates in relicensing, this process has generally been sequential and separate, at times resulting in conflicting license conditions. Today, it is up to the licensee to try and resolve those. As such, conditions have sometimes extended to private lands where there is no clear nexus to the project.

The discussion draft being debated here would accomplish many of these objectives. Given the focus of this committee on crafting and advancing energy policy for the 21st century, you and your colleagues have an important opportunity to bring meaningful change to the hydropower relicensing process, and to assure that it is consistent with needs and opportunities today and many years ahead.

PG&E looks forward to working with you.

[The prepared statement of Mr. Livingston follows:]

Testimony

of

Randal S. Livingston, P.E.
Vice President, Power Generation
Pacific Gas and Electric Company

before the

Committee on Energy and Commerce
Subcommittee on Energy and Power

of the

United States House of Representatives

on

Hearing: "Discussion Drafts Addressing Hydropower Regulatory Modernization and FERC Process Coordination under the Natural Gas Act"

May 13, 2015

Good morning Chairman Whitfield, Ranking Member Rush and members of the Energy and Power Subcommittee. My name is Randy Livingston, and I serve as Vice President of Power Generation at Pacific Gas and Electric Company (PG&E).

PG&E is one of the largest combined natural gas and electric utilities in the United States. Based in San Francisco, with more than 22,000 team members, the company delivers some of the nation's cleanest energy to nearly 16 million people – or one in 20 Americans – throughout a 70,000-square-mile service area in Northern and Central California.

PG&E also owns and operates one of nation's largest investor-owned hydroelectric systems, which is built along 16 river basins and stretches more than 500 miles. PG&E's 67 powerhouses, including a pumped storage facility, have a total generating capacity of 3,888 megawatts (MW) – enough to meet the needs of nearly four million homes. The system relies on approximately 100 reservoirs located primarily in the higher elevations of California's Sierra Nevada and Southern Cascade mountain ranges.

PG&E's hydroelectric system consists of 26 federally licensed projects. Since 2000, PG&E has completed 10 hydropower relicensing proceedings representing 1,140 MW. PG&E has 7 "active" hydropower relicensing proceedings, which represent an additional 1,131 MW.

As required by federal and State regulatory agencies, PG&E evaluates and mitigates the projects' impacts on natural resources and the environment. We have made it a priority to work collaboratively with stakeholders, including federal and State agencies, local community members, environmental organizations, fishing interests and other recreationalists, and agricultural landholders, among others, during the relicensing process. Together, we work to assess the impacts of these projects, identify the issues of importance, develop plans to protect fish and wildlife habitat, enhance recreational uses, and improve water quality and flow management.

We believe this collaborative approach best serves the public interest, as we recognize that many entities and individuals rely on the watersheds in which our facilities are located. At the same time, we believe that the process currently in place could be substantially improved.

Hydropower is an invaluable, renewable resource – and one that our country can and should do more to capitalize on. It is a greenhouse gas free source of energy that provides important benefits to the overall power system, particularly systems with significant amounts of intermittent renewable generation, as well as to energy consumers across the country.

We appreciate all the efforts made to date by past Congresses to advance hydroelectric generation and we believe that this Committee is taking a very important step to continue this progress, with the release of the Discussion Draft on Hydropower Regulatory Modernization (or Discussion Draft), and by holding today's hearing.

PG&E believes it is critical for hydroelectric power generators to be able to move through the relicensing process more efficiently and more affordably, so that we can implement the environmental protections, community improvements and facility upgrades much more quickly than we do today. Essentially, delays in the relicensing process merely delay improvements and add costs, which are ultimately borne by the energy consumer.

We believe that the Discussion Draft includes common sense reforms, which would allow owners and operators of hydroelectric systems to function more efficiently, while providing – and accelerating -- environmental protections and other benefits.

Hydropower: An Abundant Resource with Challenges

Hydropower is America's largest renewable energy resource. This safe, affordable and dependable natural resource is also by far the largest source of renewable electricity in the United States, at approximately 100 gigawatts of installed capacity.

In order to capitalize on hydropower's existing capacity and future potential, addressing key challenges within the existing hydropower licensing process is necessary. With respect to PG&E's system, the process to relicense existing hydroelectric projects requires extensive consultation with multiple State and federal agencies, consistently takes at least seven years, and frequently lasts more than ten years. For example, the relicensing of the Poe Project is now in year seventeen.

Meanwhile, the cost to PG&E customers to obtain a license renewal has routinely exceeded $20 million per license, and some current proceedings will exceed $50 million. When, and if, a license is approved and received, implementing the conditions of the license also routinely costs tens-of-millions of additional dollars.

To put this into greater perspective, the cost and duration of the process to relicense an existing hydroelectric project can be just as cumbersome and complex as seeking a license for a new, unbuilt hydroelectric project. In both cases, the cost and duration associated with licensing is typically far greater than any other established electric generation technology.

Congressional Action: Addressing Federal Regulatory Changes

PG&E applauds Congress for taking meaningful steps over the years to promote hydropower development, including taking swift action in 2013 to pass the "Hydropower Regulatory Efficiency Act of 2013" (now Public Law 113-23), and the "Bureau of Reclamation Small Conduit Hydropower Development and Rural Jobs Act" (now Public Law 113-24).

We also remain encouraged that the U.S. House of Representatives and U.S. Senate have expressed a desire – and are working now – to craft broad energy plans in the 114th Congress. PG&E fully supports the process and will remain an active voice in

sharing our experiences during the development of potential legislation related to hydropower licensing, among other key issues.

Actions taken to provide a greater level of regulatory clarity and certainty for hydropower development and production, which are captured in the Discussion Draft, serve as another example of the important work of this Subcommittee. The recognition of such licensing challenges in California and across this country, and the initiative to address these issues – as the Energy and Commerce Committee intends with this Discussion Draft – are very important if our goal is to maximize hydropower's future potential.

Thus, there is no question that the Discussion Draft helps in many ways to significantly improve the efficiency of the federal regulatory processes surrounding hydropower licensing. In fact, PG&E believes it responsibly reduces regulatory uncertainty across the nation, without sacrificing protections for the environment or jeopardizing the integrity of the licensing process.

However, PG&E believes challenges still remain, and future action at the federal level is necessary to assure the continued operation of existing hydropower and support for growth of new hydropower. At its most basic level, improving the efficiency of the licensing and relicensing processes is of foremost importance.

Licensing Improvements for Hydropower

PG&E appreciates and recognizes the right of and need for federal agencies to place license conditions upon the lands for which they have the responsibility to manage. Similarly, PG&E also recognizes and appreciates that different federal agencies have different missions and may therefore have different perspectives on what license conditions are needed. However, we believe that better coordination of these perspectives is necessary given how the process and agency interaction works today.

The recommendations we advocate to modernize the process will: 1) help improve the timeliness and cost of renewing a license; 2) ensure all involved stakeholders use the same underlying data, studies and schedule in exercising their authorities; 3) provide clarity of extent of authorities; and 4) provide a process for a single effective challenge opportunity before the Federal Energy Regulatory Commission (FERC) to resolve disputes regarding proposed license conditions.

Some specific actions Congress can take to overcome the existing challenges and maximize hydropower's potential, include addressing the following four areas:

- Improve coordination between federal and State environmental reviews;
- Better define the extent of authorities by federal agencies;
- Improve federal agency coordination and transparency; and
- Improve federal and State agency coordination and transparency.

To achieve these basic improvements, Congress should consider advancing legislation on the following five principles, which the Discussion Draft does in several cases:

- Establishing a defined process at FERC to resolve issues arising from overlapping or conflicting authorities, or overlapping and conflicting license conditions among federal agencies, as well as between federal and State agencies.

  The Discussion Draft accomplishes this recommendation with respect to issued licenses through new Federal Power Act (FPA) section 4(h) which provides that the Commission shall have exclusive authority to enforce, amend, approve compliance with, and otherwise administer all terms, conditions, prescriptions, certifications, articles, and all other requirements included in any license or exemption. PG&E believes that the intent of the Discussion Draft is for this authority to be applicable to conditions proposed during a licensing process and that such intent should be clarified in the Discussion Draft.

- When a preliminary condition is proposed by an agency, the relicensing process currently allows a licensee to propose alternatives that would meet the resource objective, but be superior from a licensees' perspective; and it allows for trial type hearings on the preliminary condition. However, the process does not allow for any challenge of a final condition; further, it does not require that the final condition resemble the preliminary condition or the outcome of the hearing. To that end, we suggest this be addressed.

  The Discussion Draft partially accomplishes this recommendation through new FPA section 35 which requires the Commission to establish procedures to ensure the integration of all applicable conditions in the trial-type hearing such that the findings of fact resulting from the trial-type hearing are accounted for in any determination related to the conditions, any modified conditions, or alternatives to modified conditions. Also, the Secretaries are prohibited from submitting any new condition/prescription addressing any impact or resource related to facts established with respect to the trial-type hearing.

- Requiring the use of the same studies and data for both federal and State environmental analyses, including defining a disciplined schedule for all agencies and stakeholders to adhere to.

  The Discussion Draft accomplishes this recommendation by adding new FPA section 4(i), which seeks to minimize duplicative studies and process costs by maximizing the use of existing information.

- PG&E recognizes the rights and authorities of the federal government when a hydropower project is built on federal land, and the ability of the agency overseeing that land to prescribe reasonable conditions to protect other

beneficial uses. At times, PG&E has negotiated voluntarily for certain conditions to be applied on private land. But we do not believe that federal agencies should have unilateral authority to condition private land. We recommend that federal land management agencies with jurisdiction over federal lands affected by a hydropower project develop and propose the necessary and reasonable mandatory conditions and terms that are under their jurisdiction, consistent with their authorities, on project or federal lands, and directly related to the project.

The Discussion Draft accomplishes this recommendation by revising FPA section 4(e) to provide for mandatory conditions for the portion of such reservation occupied by the project that will mitigate adverse effects of the project, if any, except that no such condition may impose a requirement that impairs project operations, management, or utilization of lands or resources outside such portion of the reservation occupied by the project.

- Empowering FERC not to adopt proposed license conditions that do not have a clear nexus with the project being licensed or any actual effect on federal reserved land.

  The Discussion Draft should be enhanced to fully achieve this recommendation by adding to its FPA section 4(e) revisions language that mandatory conditions must "have a clear and direct nexus to the presence or operations of the project."

We also believe additional efforts could be made to further enhance the Discussion Draft, including allowing FERC not only to establish a schedule with respect to all federal authorizations, but also to consider late filed conditions as recommendations under FPA Section 10(a).

At present, the Discussion Draft provides that if an agency does not comply with the schedule established by the Commission, with respect to a federal authorization, then the licensee may pursue remedies under new section 313(d) of the FPA. These remedies include jurisdiction in the courts of appeals for the review of an order or action of a federal agency (other than the Commission) or a State agency acting pursuant to federal law and an alleged failure to act by a federal agency (other than the Commission) or State agency acting pursuant to federal law. This section allows the court to remand the proceeding to the agency and to establish a schedule for action. While the proposed language is an improvement over the current situation, it could still result in extensive legal delays and heavy additional costs for the licensee.

In addition to implementing these principles, Congress should continue its work to identify criteria that result in sensible mandatory conditions all agencies can embrace. While PG&E generally has had success in working with federal and State resource agencies and others to develop collaborative solutions, the fact remains that certain federal entities can be narrowly focused on a single resource or unwilling to consider all of the impacts of their mandatory conditions, such as economic, environmental and

electric reliability. We believe that a bipartisan solution should be within reach to address this concern.

PG&E believes these common sense, much-needed improvements to the hydropower licensing process can be accomplished in a responsible and balanced manner that protects and preserves our fisheries and other natural resources, as well as the collaborative process in place today.

At the same time, such enhancements would bring consistency, predictability, and lower costs for projects that support the safe and reliable delivery of domestic hydroelectric power – benefiting utility customers, the environment, American jobs, energy infrastructure, and the power grid. For example, a license renewal typically results in enhanced habitat and species protections, more access to recreational areas and updated water resources measures. These are improvements that all stakeholders want, but unfortunately they often take too long to put in place. We believe a more timely process will not jeopardize the implementation of these benefits, but instead ensure that they happen sooner and at lower cost to energy consumers.

PG&E looks forward to continuing our efforts – and working with Congress to further address these important issues – as we strive to operate the safest and most reliable hydroelectric system in the nation.

Again, PG&E appreciates the opportunity to participate in today's hearing. We applaud your leadership, as well as that of Congresswoman Cathy McMorris Rodgers (R-WA), for bringing the hydropower licensing issue to light. PG&E looks forward to working with you, this Subcommittee, and other members of the U.S. House Representatives and U.S. Senate on finding reasonable opportunities to advance hydropower development, including embracing realistic reforms to reshape and modernize the licensing process.

Mr. WHITFIELD. Thanks, Mr. Livingston.

And our next witness is John Suloway, who is Board Member of the National Hydropower Association, and you are recognized for 5 minutes.

STATEMENT OF JOHN J. SULOWAY

Mr. SULOWAY. Good afternoon, Mr. Chairman, Ranking Member Rush, members of the subcommittee. My name is John Suloway. I appear today on behalf of the National Hydropower Association. I am on the Board of Directors, serve as Secretary of the Executive Committee, and I was President of NHA about 10 years ago.

NHA appreciates and commends the work this committee and Chairman Upton, and also the discussion drafts proposed by Representative Kathy McMorris Rodgers. I am honored to be here today to discuss this issue, particularly with the focus on hydropower regulatory modernization.

Let me tell you a little bit about myself. I grew up in the electric utility industry. I have focused my entire career on project development, licensing, and environmental research. Most of that time was with the New York Power Authority. I retired from NYPA at the end of the year as the Vice President of Project Development Licensing. I loved my job, I loved the power authority, and I particularly loved working in hydropower.

As you can tell from my written testimony, NYPA is one of the leading producers of electricity in the State of New York, and we have one of the largest hydropower systems in the entire country. My job and my group focused on project development and licensing of both generation and transmission projects. We worked a great deal on hydropower, but also I developed combined cycle plants and simple cycle turbine projects that burn natural gas, and also high voltage transmission lines.

In my testimony, I am trying to convey four basic points. Number one, hydropower is a great technology. It has a proven track record of being a dependable and cost-effective source of generation. Also, in today's world where the norm is change, hydropower is a crucial tool for maintaining the reliability of the changing electrical grid, while helping to address climate change. These characteristics made hydropower very attractive for economic development. There is a significant potential for increased hydropower capacity which is not being realized.

Point two, the development of more hydropower should be a key component of America's energy portfolio. We have thousands of megawatts that can be developed at existing dams that are not being developed, in part because the hydropower licensing process is protracted, costly, and risky. And us folks in the electrical utility industry tend to be risk-adverse.

Point three, we, and I mean the big we here, industry, regulators, nongovernmental organizations, and Members of Congress, we have been working since the 1990s to improve the hydropower licensing process. We have made progress. There have been improvements in the licensing and administration of hydropower, but additional work needs to be done to make the process more efficient so a significant portion of that undeveloped capacity can be developed.

My fourth point. The goals and objectives expressed in the discussion draft bills would help to make hydropower more attractive to developers and investors, while ensuring careful consideration of environmental values and the protection of natural resources. Protecting the environment and natural resources is important, and is a commitment that the hydropower industry takes seriously.

In conclusion, I have made a career of navigating these archaic processes. And that being said, I have come to the conclusion that we have a very important opportunity here that we should not miss. Like I mentioned before, incremental changes in the FERC process have improved the process, and as part of making those changes, we have created relationships, we have created friendships, and we can build on that communication improvements as we move forward. But when you stand back and you look at the fundamental question that is in front of us, why shouldn't we be able to license a hydropower project for the same amount of time and the same amount of money as it does for a combined cycle plant that is burning natural gas? And when you look that question in the face, you know we have more work to do.

So thank you for providing me this opportunity to testify on behalf of hydropower's role in meeting our nation's environmental, energy, and economic objectives, and I look forward to answering your questions.

[The prepared statement of Mr. Suloway follows:]

Written Testimony of John Suloway

On behalf of

The National Hydropower Association

Before the

U.S. House of Representatives Energy and Commerce Committee

Power and Energy Subcommittee

Regarding

Discussion Drafts Addressing Hydropower Regulatory Modernization and FERC Process Coordination under the Natural Gas Act

May 13, 2015

Executive Summary

1. Hydropower has proven energy, grid reliability, and clean air qualities that are needed to sustain economic growth. There is significant potential for increased hydropower capacity, which is not being realized.
2. The development of more hydropower should be a key component America's Energy Portfolio and it's not, in part, because the hydropower licensing process is protracted, costly and risky.
3. There have been improvements in the licensing and administration of hydropower, but additional work needs to be done to make the process more efficient, so a significant portion of that undeveloped capacity can be constructed to help drive the economy of the future.
4. The regulatory principles expressed in the discussion draft bills would help make hydropower more attractive to developers and investors – while ensuring environmental values are considered and preserving the ability to protect natural resources.

Introduction

Good morning Chairman Whitfield, Ranking Member Rush and members of the Subcommittee. I am John Suloway, and I appear before you today on behalf of the National Hydropower Association (NHA). I am pleased to be here to discuss the Subcommittee's work on the Architecture of Abundance energy legislation, and in particular, the discussion draft for hydropower regulatory modernization.

To begin, let me provide you a little bit of information on my background. I have spent a career in the energy sector, with over 35 years of experience in energy and transmission project development, licensing, and environmental research. Most of that time was with the New York Power Authority (NYPA). I only recently retired from NYPA at the end of 2014, serving at the time as Vice President of Project Development, Licensing & Compliance.

NYPA is one of New York State's leading suppliers of electricity, operating 16 generating facilities and more than 1,400 circuit-miles of transmission lines. NYPA's 4600+ MW hydropower system is one of the largest in the country, comprising both small and large conventional hydropower projects and pumped storage. At NYPA, I worked extensively on project evaluation, regulatory processes, public relations, contract negotiations, and management of environmental, economic and engineering studies. Much of my work focused on hydropower projects, though I also worked on natural gas and transmission projects.

My main message to you is this: improvements to the regulatory process to relicense existing hydropower plants and to approve new capacity are needed if we as a country are to fully realize

the energy and clean air benefits that hydropower – America's single largest renewable electricity resource – provides to millions of businesses and families across the country.

NHA appreciates and commends the work of Chairman Upton and the Subcommittee on the discussion draft, as well as that of Rep. Cathy McMorris Rodgers with the release of her discussion draft. We strongly support the overarching principles to remove regulatory inefficiencies and impediments to licensing clean and reliable hydropower generation. Addressing these long-standing issues will go far to remove the barriers that currently disadvantage hydropower as a cost-competitive resource.

While important steps have been made over the years to improve the licensing and administration of hydropower, the record abundantly demonstrates that further improvements are still warranted. There remains a pressing need for procedural changes that increase efficiencies, reduce redundancies and duplication of work, promote transparency, and reduce costs, while also preserving important environmental values.

NHA also believes process modernization is a benefit to all stakeholders in the process. License applicants, for existing or new projects, often reach agreements with parties in a license proceeding and are prepared to implement significant mitigation packages associated with their projects. Unfortunately, the implementation of these measures is postponed when decision-making is deferred and approvals are delayed. This situation benefits neither the project nor natural resources.

NHA looks forward to working with the Subcommittee, full Committee and others, as well as the Federal Energy Regulatory Commission, resource agencies and stakeholders on these issues as the legislative process unfolds.

Background

NHA is a national association dedicated exclusively to advancing the U.S. hydropower industry, including hydropower, pumped storage, conduit power and marine and hydrokinetic technologies. NHA represents more than 210 companies, from Fortune 500 corporations to family-owned small businesses. Its members include both public and investor-owned utilities, independent power producers, project developers, equipment manufacturers, and service providers.

Today, hydropower projects generate power in every region of the country and are America's leading source of domestic renewable electricity. Hydropower accounts for approximately 7 percent of the nation's total electricity generation and half of all renewable electricity generation. Hydropower capacity in the United States is just over 100,000 MW, which includes 22,000 MW of pumped storage – by far, the largest energy storage resource deployed both in the U.S. and globally.

Hydropower generation avoids millions of metric tons of carbon emissions each year. In fact, regions that rely on hydropower as a primary energy source reap the benefits of significantly cleaner air with some of the lowest carbon intensity rates in the country. In addition to this clean energy, hydropower infrastructure provides other important benefits, including managing river

flow for species and habitat protection, water supply, recreation opportunities, irrigation, flood control and navigation.

And critically, hydropower and pumped storage assets provide essential grid reliability and stability services, such as the ability to quickly meet changing demand in load, firming for intermittent variable energy resources, such as wind and solar, and blackstart capability in times of outage. While these are highly technical, "behind the scenes" issues in electric grid management, they underscore the unique and vital importance of hydropower in an "all of the above" energy strategy.

As just one example, following the August 2003 East Coast blackout, hydropower projects in New York and Canada, including NYPA projects, operated continuously and served as the base for restoring power to millions of Americans. Unfortunately, all too often, these essential contributions of hydropower are not accounted for by regulators in the licensing process.

Finally, hydropower is a proven renewable energy resource – one that has been in use in our country for well over 100 years. And despite its long and established history, hydropower is also an energy resource for our future, with tremendous growth potential. Recent studies by the Department of Energy and others demonstrate the potential for new development opportunities, particularly those that maximize the contribution from our existing infrastructure – whether that be adding capacity to existing hydropower facilities or adding power generation to existing non-powered dams and conduits. And new studies are demonstrating additional project opportunities in the areas of pumped storage, marine energy and hydrokinetics and new development.

Need for Regulatory Improvements

While the opportunities are many, the full benefit of these projects will not be achieved without addressing the challenges presented by the complex development process for hydropower – a process that takes years to complete, has significant up-front costs, and contains too much uncertainty and risk. Meaningful improvements to the hydropower regulatory process are needed to meet today's challenges confronting the nation's development of hydropower.

Hydropower has proven qualities that are needed to sustain economic growth. There is significant potential for increased hydropower capacity, which is not being realized.

Hydropower is an important component of the existing energy generating portfolio. As stated, hydropower comprises 7 percent of existing electricity generation in the United States and approximately half of the renewable electricity generation. It's valued for the following qualities:

- A long life span;
- No emissions (a sustainable resource and the leading form of renewable electricity in the country);
- The ability to provide base load power (unlike many other renewable resources), because we can forecast the output a day ahead;
- No fuel risk (meaning no hedging exposure, no counterparty risk and no transportation risk);
- No waste stream;
- Low operation and maintenance costs;

- Reliability;
- Affordability (taking into account the full project lifetime, fuel costs and operation and maintenance, hydropower has the lowest levelized cost of electricity of any resource);
- Predictable rates; and
- Limited regulatory risk (once operating)

More hydropower capacity should be installed to meet future needs. At the NHA annual conference last month, for example, representatives from Yahoo and Microsoft spoke about the importance of hydropower. They explained how they valued its reliability and cost effective rates. Microsoft also spoke how the use of hydropower was consistent with their policy with regard to climate change. Both Yahoo and Microsoft also expressed interest in the potential for additional hydropower for their data centers. Its characteristics make hydropower well suited for future economic development.

However, of the more than 80,000 dams in the United States, just three percent (roughly 2,500) provide the more than 78 gigawatts (GW) of hydropower. While many non-powered dams may not be, for various reasons, appropriate candidates for power additions, a significant number are well suited for the addition of hydropower assets. An April 2012 report by the Department of Energy's Oak Ridge National Lab found that adding power to the nation's non-powered dams has the potential to add more than 12 GW of new capacity (representing a 15 percent increase of hydropower capacity and nearly 10 percent increase of the total current renewable capacity).

Yet, with the need and potential for more hydropower, there was only a 1.48 GW increase in installed capacity in the United States from 2005 to 2013 and capacity additions to existing projects accounted for 86 percent of the increase. Whereas, there was an increase of 42 GW of installed summer capacity for generators burning natural gas in that same time period.

The development of more hydropower should be a key component America's Energy Portfolio and it's not, in part, because the hydro licensing process is protracted, costly and risky.

The time, cost and risks associated with licensing hydropower projects are not commensurate with the impacts when compared with other forms of generation. Because of the licensing burdens, when faced with the choice of what type of generation to install, there is less risk in choosing a simple cycle turbine or a combined cycle plant that burns natural gas or low-sulfur oil, than building a hydro plant. The use of natural gas has proven to be a valuable component of our energy portfolio, but over-reliance on one fuel is a weakness that should be avoided in our energy portfolio of the future.

While there is some variability with regard to size and location, the regulatory approval processes for simple cycle turbine or combined cycle plants are generally 1-2 years – even in urban areas like New York City. The FERC licensing process for hydro plants is generally 8 years or more, including both licensing and pre-filing activities. With regard to licensing costs, a combined cycle plant is approximately $1 to $2 million; whereas, fisheries studies alone can cost

multiples of that figure for a hydropower project. It is not uncommon for a hydropower license applicant to spend $10 million or more on just the licensing process.

When comparing the risk between hydropower and natural gas generation, much of the risk that is placed on hydropower is due to the associated regulatory burdens – and not due to any inherent differences between hydro and natural gas fuel sources. In fact, the need is increasing for more hydropower capacity because of the tremendous value it brings to the grid. Despite this value, hydropower is considered too risky by some developers because of the regulatory barriers. This is not a situation where we need more regulation of combined cycle plants. We need to bring order to and streamline the licensing of hydropower.

The cost of licensing hydropower projects is in part driven by the regulations requiring extensive information on the proposed project, existing environment, and potential impacts. Protecting the environment and natural resources is important, and is a commitment the hydropower industry takes seriously, but the amount of information that is requested can be excessive and not directly related to the project or its potential impacts. For existing projects undergoing relicensing, extensive information requests are sometimes used as a negotiating tactic, which can increase costs and prolong negotiations. For proposed new development, where the license applicant does not have the benefit of the proposed project's income stream, study requests can be an effective means of increasing project costs to a point where the project is no longer cost-competitive.

In addition to over-expansive study requests, other aspects of the licensing process add undue costs to hydropower projects and, ultimately, to ratepayers. Under the Federal Power Act (FPA), for example, FERC has the statutory obligation to craft license conditions in a manner that gives "equal consideration" to the spectrum of public interests present in our nation's waterways, such as power development, environmental protection, navigation, recreation, and water supply. However, FERC's obligation is frustrated when other agencies exercise their broad powers, under the FPA and other statutes, to impose conditions in the license that FERC cannot balance or modify in the public interest, and which create inconsistencies and conflicts, which themselves can cause further delays and increase licensing costs.

These mandatory conditions are very significant to the hydropower licensing process because of the costs associated with measures. In some cases, the resource agencies leverage the potential use of their mandatory conditioning power in negotiations. This approach can make the discussions acrimonious and protracted. Even though FERC issues the hydropower license, these authorities create a complicated process, where agencies with seemingly equal authority have different ideas on resource management, and where no single agency can evaluate the license obligations as whole, to ensure that the public interest is met.

Changes are needed to make the hydropower licensing process more efficient, to tap into the significant potential for new capacity, and to drive the economy of the future.

In my judgment, one of the hallmarks of the discussion draft bills is the concept of placing FERC as the lead agency for all authorizations required under federal law for the licensing and

development of hydropower resources. Authorizing FERC to establish and enforce an overall schedule will help keep the process on track and avoid delays that have been the status quo in this industry for decades. Requiring other agencies with review requirements to cooperate with FERC will create efficiencies, promote economy, reduce redundancies, and again reduce delays. This proposal is consistent with the regulatory process in the State of New York, implemented in the 1980s, that has proven to be very successful. New York State uses an orderly, coordinated approach to license electric generating facilities and high voltage electrical transmission lines. There are separate processes for licensing generation and transmission projects, but both use a "one-stop forum" for applications to facilitate the process.

Article 10 of the New York State Public Service Law ("PSL") covers applications to construct, operate and/or modify an electric generating facility. In 2011, Governor Cuomo signed legislation that put the new Article 10 Law in effect. It includes a fast track to modify existing major electric generating facilities. Article 10 applications are reviewed by the New York State Board on Electric Generation Siting and the Environment ("Siting Board"). The Department of Public Service serves as the Chair of the Siting Board.

The schedule requirements are mandated. The Siting Board will determine, within 60 days of filing, whether the application complies with Article 10. Once the application is determined to be in compliance, the Siting Board will conduct public hearings to clarify project-related issues, receive public comments and review evidence. The Siting Board must make its determination within one year from the date the application is deemed to fully comply with Article 10, unless

that timeframe is waived by the applicant. There is a similar process for Transmission lines covered under Article VII of the PSL.

This type of coordinated and scheduled processing of license applications has worked in New York State. The particulars will be different for the federal licensing and approval of hydropower projects, but the general principles and objectives should be the same:

1) A fair, efficient process where FERC takes the input of all the relevant agencies and appropriate stakeholders, but is the ultimate decision-maker.
2) A scheduled process that is comparable to that of other generation technologies with regard to cost and duration so that hydropower is not disadvantaged.
3) A process that meets the legal requirements of environmental protection, but takes into account the benefit and costs when evaluating options for enhancement, protection and mitigation measures.

These principles can be achieved through incremental changes to the FPA. The goal here is a more efficient and balanced process while maintaining environmental standards and agency authorities.

Conclusion

Today, there is much at stake for hydropower and the families, businesses and communities that rely on its low-cost, reliable, clean generation. NHA and the hydropower industry stand ready to help meet our common clean energy goals and we look forward to working further with this Subcommittee and others on these important issues.

I thank the Subcommittee for providing me this opportunity to testify on hydropower's role in meeting our nation's environmental, energy and economic objectives and look forward to answering your questions.

Mr. WHITFIELD. Well, thank you, Mr. Suloway. And thank all of you for your testimony.

And at this time, I will recognize myself for 5 minutes of questions.

It is obvious to everyone that the two subject matters we are looking at is natural gas pipelines, and we are looking at hydropower. And, Mr. Roos-Collins, I think I know where everybody stands on this draft. You focused on hydropower. You indicated—are you—did you say that you believe that there are some problems at FERC relating to licensing and relicensing of hydropower that need to be addressed, or I know that you are opposed to this particular draft, but are there some areas that you do think needs to be addressed?

Mr. ROOS-COLLINS. Yes, Mr. Chairman.

Mr. WHITFIELD. OK. Thank you. I just wanted to clarify that.

And, Mr. Livingston, would you say that from your perspective at PG&E, is licensing more of an issue or is relicensing more of an issue?

Mr. LIVINGSTON. Well, for us it is relicensing. I think as we look at our portfolio, we are going through a significant period of relicensing and are regularly involved in it. The licensing is a critical issue for development of the new resources on, for instance, nonpower dams——

Mr. WHITFIELD. Right.

Mr. LIVINGSTON [continuing]. And for the licensing potential for pump storage development to help integrate other——

Mr. WHITFIELD. Right. Now, you said you had seven active relicensing projects right now, I believe, and I think your testimony talked about the cost would be $20 to $50 million. And I think you mentioned $100 million. What was that about?

Mr. LIVINGSTON. That is about license implementation costs. So not only do you have the cost to get the new license, then you have to comply with all the new terms.

Mr. WHITFIELD. And my understanding, I am not an expert, but my understanding, the relicensing is almost as cumbersome as the licensing process, is that correct?

Mr. LIVINGSTON. Yes, it is the same.

Mr. WHITFIELD. It is the same, OK. OK.

And, Mr. Santa—well, back to you, Mr. Livingston. I have heard about one relicensing project that you all have been involved in that has gone on for a number of years. I don't know specifically the information about it, but could you give us a recent example of a challenging and cumbersome hydropower licensing proceeding that you are going through that has been particularly frustrating?

Mr. LIVINGSTON. Well, I think just our most recent work is on our Desalba-Centerville Project. It is a 26 megawatt project. Lots of important resource issues there to work through. That process is currently in its eleventh year. We are well over $26 million, well over $1 million per megawatt, to go into relicensing. And we are—just got a water quality certificate—a proposed water quality certificate that has competing license conditions with everything that we have been talking about for the previous 11 years. And we are going to have to work to—now to resolve those before a final license can be——

Mr. WHITFIELD. So is it this primarily a federal issue or a state issue, or——

Mr. LIVINGSTON. It is combined. The State Water Board is working under the Clean Water Act.

Mr. WHITFIELD. OK.

Mr. LIVINGSTON. The concept that I think many of us are trying to work through is how we can make the same set of studies, the same——

Mr. WHITFIELD. Right.

Mr. LIVINGSTON [continuing]. Time frame, and the same process all come together at the end so——

Mr. WHITFIELD. And how many years have you been involved in this project?

Mr. LIVINGSTON. It started its relicensing 11 years ago.

Mr. WHITFIELD. Eleven years ago. And it is still not resolved.

Mr. LIVINGSTON. It is still not resolved.

Mr. WHITFIELD. OK.

Mr. Santa, Mrs. Elefant had mentioned in her testimony that from her perspective, there is really no need for change, and she specifically said if you have a problem, you can file this lawsuit. I am assuming that you don't view that as a practical solution because of cost.

Mr. SANTA. No, we don't view that as a practical solution, Chairman Whitfield. For example, Ms. Elefant mentioned two instances in 10 years that someone had availed themselves of that; one of which was resolved reasonably quickly, but the other one involved multiple years, two trips to the U.S. Court of Appeals for the Second Circuit, and ultimately, the project applicant ended up walking away from the project after investing years and significant resources in trying to develop that project.

I think it is important to remember here that the current law would compel the applicant to sue the very agency from which it is trying to get the permit. Is that going to incline that agency to be more cooperative? Not to mention that same applicant may have other applications on other projects pending before that same agency.

Mr. WHITFIELD. You had mentioned this GAO report, I believe it was in your testimony, but it basically said that the average length of time on one of these pipeline certificates is like 5 years, I believe.

Mr. SANTA. It was 558 days.

Mr. WHITFIELD. 558. The 5 years, I guess, was the pre-filing and the other agency permits and so forth.

Mr. SANTA. Yes, sir. Yes, I think it was if you took into account the time from project inception, the pre-filing process——

Mr. WHITFIELD. Right.

Mr. SANTA [continuing]. The FERC process, the other permits——

Mr. WHITFIELD. Right.

Mr. SANTA [continuing]. And construction, the 5-year period is——

Mr. WHITFIELD. Yes.

Mr. SANTA [continuing]. A reasonable estimate.

Mr. WHITFIELD. Yes. And I point that out just because it does appear that there is an issue here. I mean some people are indicating

that they don't think there is an issue, and that is why we have these hearings to hear all sides.

So my time has expired. At this time, recognize the gentleman from Illinois for 5 minutes.

Mr. RUSH. Thank you, Mr. Chairman.

Ms. Elefant, as a former FERC lawyer, do you believe that requiring other agencies to defer to FERC on the scope of environmental review would help expedite the natural gas permitting process and leading to fewer or more lawsuits, and are FERC's staff equipped to determine the scope of environmental review over and above the experts in other agencies with jurisdiction over these issues?

Ms. ELEFANT. I don't think that it would expedite anything. The problem is when you are looking at the scope of environmental review, it relates to what the agency's mandate is. So, for example, I have seen cases where FERC has determined, for example, that it will not consider cumulative impacts related to fracking because that is something that FERC has determined is not causally connected to pipeline certification. And that is a decision that has been affirmed by the Second Circuit. There are other state or federal agencies for which this issue of fracking is more closely related to their mandate, so they might consider that within the scope of the issues they address when they are granting a permit. Unless you change the underlying regulatory mandate of those related state and federal agencies, that is the only way you can eliminate consideration of those issues. They look at different issues, that is why they are different agencies and they have different mandates.

Mr. RUSH. Yes.

Mr. Roos-Collins, I know that you are not an agency expert on how this bill would impact commercially mandated environmental protection laws, but I don't see anybody else on the panel who is an agency expert either, nor did I see anyone on the previous panel who is an agency expert, but I just want to get your opinion, if I could. How would this bill impact issues relevant to the Department of Commerce, Department of the Interior, and the Department of Agriculture who are the very agencies that are responsible for protecting water quality, America's fishways, federal reservations, and other of our nation's natural resources? Can you give me an opinion on that?

Mr. ROOS-COLLINS. I do. The discussion draft would transfer much of the authority to FERC. And I will leave aside pre-licensing, which is what our testimony has addressed. Let me briefly mention post-licensing. The opening page of the discussion draft provides that FERC will have exclusive authority to administer a license——

Mr. RUSH. Yes.

Mr. ROOS-COLLINS [continuing]. Which is to say that it will have exclusive authority to administer those terms of a license that derive from a water quality certification. That is trouble, in terms of actually protecting the beneficial uses of our waters. And to be clear, Ranking Minority Member, I believe that FERC is a very capable federal agency.

Mr. RUSH. Yes.

Mr. ROOS-COLLINS. I respect Ms. Miles and her staff. They are competent. This is not about competency; it is about on-the-ground knowledge. In a typical proceeding, FERC staff will visit the project a few days. By contrast, the staff for the State Water Agency, or for the Fish and Wildlife Service and NIPS, or the Forest Service, will have walked those grounds dozens, if not hundreds of times. That on-the-ground knowledge is what Congress respected in the 1935 Federal Power Act, which delegated to them limited authorities to use that knowledge to protect certain resources.

Mr. RUSH. Well, it seems to me as though, Mr. Roos-Collins, that we are at a position that the question—when shifting the responsibility for holding trial-type hearings on any disputed issue of material fact from the secretaries of the same departments, Interior, Agriculture, or Commerce, to FERC, would that, in your opinion, do anything to expedite or will it be akin to a rat running around a maze, no way out, in terms of the permitting process, would this help us at all expedite?

Mr. ROOS-COLLINS. My opinion is that it would not expedite, and it—indeed, it could delay.

And if I might give one brief example. The National Marine Fishery Services uses administrative law judges assigned from the Coast Guard. Those judges conduct a trial as though they were onboard a ship. At a pretrial conference, they once looked at the attorneys and they said, you have pending motions, if you argue those motions I will cut you off, and if I cut you off I will probably rule against you. You want to argue on the motions? And, of course, all of the parties said no. Well, that pretrial conference was over in 15 minutes.

My experience with the judges assigned by Interior and Commerce and Agriculture is that they are tough and fair, and as a result, I don't think moving this to FERC would expedite decisions.

Mr. RUSH. Mr. Chairman, I yield back.

Mr. WHITFIELD. At this time, recognize the gentleman from Virginia, Mr. Griffith, for 5 minutes.

Mr. GRIFFITH. Thank you, Mr. Chairman. Appreciate it.

Mr. Santa, I believe you may have heard my questions with the prior panel, and so you know that I am concerned about placement of gas pipelines, but I want to talk to you about the need for gas pipelines because that is the driving force behind all of this, particularly in those areas that have relied on coal to produce their electricity. With the myriad of different regulations that the EPA has proposed, many of those power generating companies, the electric company as we know it back home, are having to turn to natural gas, isn't that true?

Mr. SANTA. Yes, sir, that is true.

Mr. GRIFFITH. And as a result of that, and looking forward at the impact of the closing of many coal-fired power electric generation units, many of those, particularly in the Southeast and the East, are looking at using natural gas instead, isn't that also true?

Mr. SANTA. That is correct, sir.

Mr. GRIFFITH. And as a result of that, there are some serious concerns across the industry that if the natural gas pipelines are not built in a quick manner, or brought to bear fairly soon, we will have a problem with either rolling brownouts or possibly even

blackouts in many parts of the East and Southwest, is that not also true?

Mr. SANTA. Many parties have expressed that in connection with the Clean Power Plan. We are confident that gas and gas pipelines ultimately can meet that need, but INGAA too, in our comments on the Clean Power Plan and at the FERC technical conferences noted the timing issues in terms of the time needed to develop infrastructure versus the compliance deadlines.

Mr. GRIFFITH. And, of course, it is one of the reasons why I support legislation that would cut the Clean Power Plan off until the litigation is over because it is going to create huge problems for electric generation companies across the United States, but particularly in the Southeast and the East. And I have serious questions about the legality of the EPA's interpretation—I should say their new interpretation, not their original interpretation of Section 111(d). And so that is one of the big drivers and the reason that right now there are as many as four, I know of at least two, a third that I have heard about, and a fourth that has been indicated in an article today, looking at gas pipelines in my region, and that is what is driving all of this, isn't that what you would indicate to us?

Mr. SANTA. It is a significant driver. There is also industrial demand that is part of the demand for those pipelines.

Mr. GRIFFITH. Well, and the natural gas pipeline—the natural gas price being low is a factor to be considered in that, and that is what is driving that new manufacturing demand as well, isn't it?

Mr. SANTA. That is correct, sir, yes.

Mr. GRIFFITH. And so if we are going to have more good-paying jobs, if we are going to have electricity in our homes, whether I agree with the EPA's regulations or not, we are going to need natural gas pipelines, isn't that correct?

Mr. SANTA. Yes, sir.

Mr. GRIFFITH. Now, that being said, how can we do this in a better fashion because—and I would submit one of those would be to give a better timeline on the EPA regulations, if they are found legal, which I don't think they will be, but what can we do to do a better job, because the decision on the ground suddenly has folks in their yard trying to figure out where they are going to place a pipeline, and one month it is in one county, and the next month it is in another county. And it has really got a lot of folks, I think, legitimately upset that they are about to lose their family farm or their home, or their area of concern, nearby them. And how can we allay those fears for the general public?

Mr. SANTA. You are right that this does acutely affect landowners, it affects their major investment, their home, their farm, their property. It also is occasioned by the fact that we have prolific gas supplies in places that, at least in recent history, haven't been prolific supply areas, and so it has created the demand for more pipelines to get that to the market. I think that overall, the FERC does a very good job with its process. I know that INGAA and its member companies are committed to this because, beyond going through the construction and siting process, these landowners will be our neighbors for years. I think that the legislation today is intended to try to make that process more efficient and yet still respect the rights of landowners and environmental concerns, and

also as part of the Administrations' Quadrennial Energy Review, the first installment focused on infrastructure, they focused on improving the permitting process.

Mr. GRIFFITH. And I am assuming that my region is not alone in having a number of proposals being made because we are going to have to move a lot of gas around the country. And of course, we had the Governor of Maine in here, requesting that we facilitate that somehow to get the gas to them, or to allow them to hook-up to electricity either at the hydro side or from Canada.

Ms. Elefant, do you think FERC is equipped to take a look at the big picture and decide if they need to have two, three, or four pipelines passing through the western part of Virginia?

Ms. ELEFANT. I think at some point somebody has to take a look at the big picture. The Natural Gas Act, although it is not imbued with the same public interest standard as the Federal Power Act governing hydro, does issue certificates for public necessity and convenience. If you look at the history of the Act in some of the older cases, FERC or the Federal Power Commission played a larger role, and they would look to see if there was a need for three or four pipelines, and try to take a programmatic view of what the public need was. In addition to development of multiple pipelines, there are other ways to increase efficiencies of existing pipelines to capture additional natural gas. FERC, in fact, just last month, implemented a policy which would incentivize existing pipeline developers to address leaks in the pipeline. And there was a study shown recently in the Boston area that if you could capture all that leakage, you could increase the pipeline capacity by almost 30 percent. So I think that in addition to looking at just building more, we need to take a more robust approach and also look at some creative solutions, for example, making pipelines safer and addressing leaks, which is really a win-win for everybody, including the pipeline, which gets incentive payments to do that.

Mr. GRIFFITH. My time is up. I yield back, Mr. Chairman.

Mr. WHITFIELD. Gentleman's time is up.

At this time, recognize the gentleman from California, Mr. McNerney, for 5 minutes.

Mr. MCNERNEY. Thank you, Mr. Chairman. And I want to welcome Mr. Livingston here to the committee this afternoon, now.

PG&E has done a lot of creative things with respect to the grid, and it has taken a lot of steps in terms of pipeline safety and leakage, so I want to make sure you get credit for that.

Are there particular federal agencies that are having trouble coming to the table on the hydro issue in a timely manner?

Mr. LIVINGSTON. I think each of the agencies, they have very dedicated folks and they are doing their best, but in a lot of cases, what we are looking at is agencies that have single or a few resource focus. Right? So if you are working in the water area or around land, or in other issues on fish, the same thing with some of the other stakeholders in this who might be interested in recreation or fishing, and it is really all of that coming together. What one agency versus another one would do as far as a prescription is—might interfere with what—another one. So the real point is trying to come together in a way that there is a decision-maker, there is one set of decisions. So it is not one particular agency, it

is when we have sequential decision-making going on and having an agency that can balance all the beneficial uses, and right now the only federal agency in the hydrospace that has that in statute is FERC.

Mr. MCNERNEY. Are problems with regard to timing and responsiveness exacerbated by the drought in California now?

Mr. LIVINGSTON. Sure. I think, particularly since we are in the fourth year of drought, and with the Governor making sure that we are taking decisive action on that. There is a lot of focus on trying to deal with the issues associated with water supply in the state, and many of the same folks and many of the same agencies are devoting their focus, rightly so, to that, and that does recently have an impact on——

Mr. MCNERNEY. OK.

Mr. LIVINGSTON [continuing]. Agency timing and so on.

Mr. MCNERNEY. Mr. Santa, you indicated in your testimony that a number of reasons for potential delays to permits, including lack of agency resources, which I am sort of getting from Mr. Livingston as well, cooperation with FERC and applications being deemed incomplete. Could you talk a little bit about the cooperation with FERC? I am not sure what that means.

Mr. SANTA. I think that I would have to go back and look specifically at the report, but I think it gets to the issue of—and a lot of what is attempted to be addressed in the discussion draft, of other permitting agencies being involved early in the process with the FERC in working cooperatively. For example, there have been some instances where agencies will not begin their process until some other action has been taken. So rather than things occurring concurrently, they may occur sequentially. That adds to the time.

Mr. MCNERNEY. Yes.

Mr. SANTA. I think it was trying to address things like that.

Mr. MCNERNEY. OK. Thank you. Do you think there is a chance that if this law or this bill were passed and enacted into law, that it would make delays longer or give rejections of applications because the agency didn't have time to complete the study?

Mr. SANTA. Well, two things. Number one, Ms. Miles, I think, had some good comments on the draft where she noted that there were parts of it that could be interpreted to inhibit FERC's ability to try to resolve some of these things earlier in the process, rather than later. And I would certainly commend the subcommittee to take a look at that and see if that could be addressed.

The issue of whether it might lead to rejections as the way for the agency to act, that is actually something that we talked about last year at a hearing in conjunction with Mr. Pompeo's legislation. I know that concern was expressed. And I think on behalf of INGAA's members, we made the point that, quite frankly, we would prefer the definite answer, even if it is a negative answer, to be engaged in a protracted process of waiting for an answer.

Mr. MCNERNEY. Well, I think what you have indicated is there have been increases in federal authorization that failed to meet the 90-day deadline. Do you think that is because there are more applicants, because there are more projects being approved, because there is more capacity being approved in the process?

Mr. SANTA. That is a good question. I don't know. The one thing I would say is that the study that we pointed to in our testimony was released in, I believe, 2012, so it dealt with projects that were 2012 and earlier. That was before really the wave of projects and infrastructure we have seen proposed in response to the shale revolution and all of the new supply coming to the market. So I am not sure that those delays really had to do with the number of projects being proposed to the agencies, but that is a good question.

Mr. MCNERNEY. OK. Thank you, Mr. Chairman. I yield back.

Mr. WHITFIELD. Gentleman's time has expired.

I have a couple of other questions I would like to ask, and if any of you all want to ask any others, fine. But, Mr. John Collins, one question I want to ask you is, do you think hydropower is disadvantaged by this current regulatory process?

Mr. COLLINS. Yes, I do. I believe that the time it takes to license and the expense of licensing new hydropower or relicensing hydropower puts it at a distinct disadvantage relative to other renewable technologies.

Mr. WHITFIELD. Yes, I mentioned in my opening statement that there are certain renewables like wind and solar that get precedence, that get preferential treatment, and are even exempted from some federal laws. But OK, I just wanted to clarify that.

And then, Mr. Suloway, and maybe Mr. Roos-Collins might want to comment on this as well, but you stated that other federal resource agencies have the authority to impose mandatory environmental conditions on the FERC license, and that that seems to contribute to delay and additional cost. Am I reading something into your statement, or is that accurate what I have said that you believe?

Mr. SULOWAY. No, they do employ mandatory conditions that do increase the cost of owning a FERC license. That——

Mr. WHITFIELD. OK.

Mr. SULOWAY. That is a fact.

Mr. WHITFIELD. Do you want to make a comment on that, Mr. Collins—Roos-Collins? I mean you don't have to, I was just——

Mr. ROOS-COLLINS. Mr. Chairman, yes, the license articles required by other federal agencies have increased cost in terms of implementation. The question that we ask is, are the benefits worth the cost? And so to take New York Power Authority's St. Lawrence FDR Project as a for instance, the federal and state agencies alike use these very authorities through settlement. I dare say that the result for the power authority may have been more expensive than what would have happened if FERC had exclusive authority.

Mr. WHITFIELD. Right.

Mr. ROOS-COLLINS. I think it is also fair to say that the benefits——

Mr. WHITFIELD. Yes. Yes.

Mr. ROOS-COLLINS [continuing]. Were significant.

Mr. WHITFIELD. Yes, well, I think that is important because sometimes there are additional costs, but maybe the benefits outweigh that. But also let me ask this question. Do these mandatory conditioning authority of other federal resource agencies frustrate FERC's ability to balance or modify the public interest? Do any of you have a thought on that?

Mr. LIVINGSTON. I don't think anyone disputes the rights of a federal agency to prescribe what happens on its land. I think part of the question goes how far does that authority go? Should it apply to neighboring lands, should it apply to private lands, should it apply to lands that are far away and have no clear nexus? So I think it is really getting down to having Congress define the extent of where that authority goes and how it is used, rather than any recognition that they don't have the right to prescribe how somebody who is a guest on their land should treat the land. And I think we all agree with that. It is just——

Mr. WHITFIELD. OK.

Mr. LIVINGSTON [continuing]. A matter of extent and where.

Mr. WHITFIELD. OK. Well, thank you.

Mr. Green is recognized for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. I apologize. Typically, on a Wednesday up here, there are so many issues going on and so many hearings.

Ms. Elefant, you mentioned in your testimony that you are not aware of any federal agency that allows a trump card. In the LNG export permitting process, FERC requires the bulk of the NEPA analysis with nothing but a concurrence from the DOE. Why is deference to FERC not acceptable?

Ms. ELEFANT. Well, I think that the provision with deference to DOE doesn't necessarily have to do with the resource review. The LNG review authority still expressly preserves the power of states to issue permits under the Clean Water Act, the Clean Air Act, and the Coastal Zone Management Act, and so I think that that statutes have such unique relationship to protecting those resources and having sort of an established procedure that deferring to FERC could encroach on the policies that were intended to be protected by those other laws.

Mr. GREEN. Well, what we are trying to do is get more coordination between the federal agencies, but you mentioned also that you are concerned about public participation. Would a 30-day notice and comment period regarding issue resolution alleviate some of those concerns?

Ms. ELEFANT. I think that the provision related to issue resolution, I have said I didn't think that something like that was necessary because there are multiple opportunities for issues to currently be resolved. For example, in one case that I have that I think would be accurately characterized as a delay case, the state agency and the Corps of Engineers, very early in the pre-filing process and again in the application process, expressed some concerns and reservations about where the project was going to go, and also asked for additional information on certain resources. And it seemed to me that there were many opportunities to resolve those along the way rather than have it be done in this pressured 30-day period, like the statute prescribes. There are still opportunities for the agencies to cooperate, and that does happen from time to time.

Mr. GREEN. Well, and I know the pre-filing work, I don't know if we have exhausted the success of that, but that is a goal to do it, to get the Corps and different agencies together so the applicant

will know what the problem is and can deal with that early on, and so that is our goal, I guess.

Mr. Santa, in your testimony, you state that challenging a permitting agency's tardiness or inaction is time-consuming and risky. Where do most companies focus on their challenges? Is it a state agency or a federal agency?

Mr. SANTA. It varies because in some instances, it is a state agency acting pursuant to delegated federal authority.

Mr. GREEN. Yes.

Mr. SANTA. For example, I think in both of the cases where pipelines have availed themselves of the judicial review provisions, they have been challenging state agency actions.

Mr. GREEN. What state would that be?

Mr. SANTA. I believe one of them was Connecticut, and I believe the other one was Maryland.

Ms. ELEFANT. Maryland was a delay case.

Mr. GREEN. OK. So it depends on the area, I guess.

Mr. SANTA. That is correct, yes.

Mr. GREEN. I was wondering if that was a problem with Texas. OK. Would arbitration better serve that approval process?

Mr. SANTA. I really don't know. That is an interesting question, Mr. Green, as to whether or not that would be something that might work. I think that the provisions that are in the draft now in terms of a dispute resolution process, I think are intended to kind of go in the direction of how do we resolve these disputes. I have not heard of arbitration being suggested before in the context of a permitting agency, an applicant, and the other stakeholders.

Mr. GREEN. Right. That would get you to a decision though.

Mr. SANTA. That is correct.

Mr. GREEN. And that is the problem.

Mr. SANTA. Yes.

Mr. GREEN. The time frame keeps getting extended because the decision is not there.

Mr. SANTA. Yes.

Mr. GREEN. Isn't that the role though for the pre-filing review is to try and get that information out before during the pre-filing?

Mr. SANTA. I think that is the goal of the pre-filing is to try to get these issues on the table early to begin to resolve them, and also to deal with them in a context before you have got a FERC application, in which case the ex parte rules and various things come to attach that tend to make it more cumbersome and more difficult to resolve. So yes.

Mr. GREEN. OK. Well, Mr. Chairman, I have run out of time, but I appreciate it. But I also know that in the—because obviously, where I come from, the LNG exporting permits are an issue, and it is not necessarily FERC, it is also DOE. And I said it earlier, the Corpus Christie permitting for both FERC but also with DOE was very quick, and—comparatively, but obviously, we have a whole bunch more in line because most of those permits will probably come from Louisiana and Texas instead of the east or west coast.

Thank you, Mr. Chairman.

Mr. WHITFIELD. You are welcome.

Recognize Mr. Rush.

Mr. RUSH. Mr. Chairman. Thank you, Mr. Chairman. Mr. Chairman, the Ranking Member Pallone asked this question of the previous panel, and I want to ask Mr. Roos-Collins the same question.

Mr. Roos-Collins, buried in the language of the draft is a two-word change to Section 4(e) of the Federal Power Act. The words on the existing statute "shall deem" are replaced by the single word "determines". The context of this change is mandatory conditioning authority of the resource agencies.

I have three questions. Is this a significant change from current law? What would be the practical effect of this change on the ability of resource agencies to protect and manage things under their jurisdiction? And lastly, will this change result in more or less litigation, in your opinion?

Mr. ROOS-COLLINS. In my opinion, the change in those two words is not significant, and here is why. I think the intent of the discussion draft is to change from a verb, deem, that has lots of discretion to determine, which sounds like it must be more rational and based in the record. That is what these agencies already must do. There is a case called Bangor Hydro, decided by the D.C. Circuit in 1996, that expressly held that a federal agency cannot have a field of dreams justification for a condition; it must have a rational basis and state a specific goal. And so with respect to those two words, what I see is an intent to recognize the holding of that case, and similar cases that followed.

Mr. RUSH. Thank you. Mr. Chairman, thank you so much.

Mr. WHITFIELD. Well, that concludes the questions, and concludes the hearing. And once again, I want to thank all of you for taking your time and coming and sharing your views and experiences with us. We look forward to working with all of you as we move forward trying to develop an overall energy package.

And we will keep the record open for 10 days. And I would like to ask unanimous consent that the following statements and letters be submitted for the record. A letter from the Edison Electric Institute in support of the hydropower regulatory modernization discussion draft, and second, a statement from the American Public Power Association in support of both the natural gas pipeline permitting reform and hydropower regulatory modernization discussion drafts.

VOICE. Without objection.

Mr. WHITFIELD. Without objection, so entered.

[The information appears at the conclusion of the hearing.]

Mr. WHITFIELD. And thank you all once again.

And that will conclude today's hearing.

[Whereupon, at 1:08 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]

PREPARED STATEMENT OF HON. FRED UPTON

The work on our bipartisan energy legislation continues, and to date the areas of agreement have significantly outweighed the areas of disagreement. I expect that trend to continue today as the subcommittee addresses two key topics, hydropower and natural gas pipelines, where I believe there is common ground on the direction the nation should be taking.

The Department of Energy's Quadrennial Energy Review (QER) set the stage by highlighting the transformative potential of American energy as well as the need for permitting reform in order for that potential to be realized. The administration's

report noted the economic, energy security, and environmental benefits of energy sources like hydropower and natural gas, particularly when it is efficiently delivered through modern infrastructure. The QER recommended changes to existing policies in order to achieve these goals, and I believe the two discussion drafts today fit in well with the message from the administration.

Hydropower and natural gas are both critical sources of energy and jobs in Michigan and across the country, but the federal process of licensing hydroelectric facilities and permitting interstate gas pipelines has grown far more cumbersome than necessary. The discussion drafts clear away the red tape and add increasing amounts of transparency so all stakeholders are aware of the process, which will help to pave the way for additional needed energy from these sources.

Both discussion drafts place the Federal Energy Regulatory Commission (FERC) in charge, and require it to set clear deadlines that all other agencies involved must meet. The end result is a more timely and certain permitting process for hydroelectric power and gas pipeline approvals. At the same time, all environmental and public safety provisions are left intact.

There will surely be points of debate, but I am also sure that we will be able to achieve resolution to most differences. That is what is what these hearings are for, and I look forward to continued progress on our energy bill.

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Power by Association℠

Edison Electric Institute

Thomas R. Kuhn
President

May 12, 2015

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515

The Honorable Frank Pallone
Ranking Member
Committee on Energy and Commerce
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Upton and Ranking Member Pallone:

On behalf of the Edison Electric Institute (EEI), I am writing in support of the "Hydropower Regulatory Modernization" discussion draft to reform and modernize the licensing and regulation of hydropower. We are pleased the discussion draft will be considered by the House Energy and Commerce Committee on May 13 and would like to work with the Committee to ensure its inclusion in the energy package that is being developed for House consideration later this year.

Hydropower continues to be, for all the right reasons, a valuable source of generation capacity. It is clean, renewable, and has the flexibility to play an important role in grid reliability and as backup capacity to intermittent generation resources. Nonetheless, the process for relicensing facilities remains difficult, costly, and duplicative. Lacking in transparency and efficiency, the process can take more than a decade.

We applaud Representative McMorris-Rodgers' leadership in this area and believe the discussion draft will lead to better coordination and timely decisions by FERC and the other federal agencies involved in hydropower licensing. Our member companies have valuable experience in negotiating the current process for relicensing hydropower facilities, and we welcome the opportunity to work with you to advance this important legislation.

We appreciate your leadership in advancing a hearing so quickly on this issue.

Sincerely,

[redacted]

Thomas R. Kuhn

Statement of the

AMERICAN PUBLIC POWER ASSOCIATION

Submitted to the

HOUSE ENERGY AND COMMERCE SUBCOMMITTEE ON ENERGY AND POWER

For the May 13, 2015 Hearing to Review

"Discussion Drafts Addressing Hydropower Regulatory Modernization and FERC Process Coordination under the Natural Gas Act"

(Submitted May 13, 2015)

The American Public Power Association (APPA) appreciates the opportunity to submit this statement for the record of the House Energy and Commerce Committee's Energy and Power Subcommittee hearing on "Discussion Drafts Addressing Hydropower Regulatory Modernization and FERC Process Coordination under the Natural Gas Act."

APPA is the national service organization representing the interests of over 2,000 municipal and other state- and locally-owned, not-for-profit electric utilities throughout the United States (all but Hawaii). Collectively, public power utilities deliver electricity to one of every seven electricity consumers, serving some of the nation's largest cities. However, the vast majority of APPA's members serve communities with populations of 10,000 people or less. The largest fuel source for public power utilities is coal (41.2%), followed by gas (21%), hydropower (19.6%), and nuclear (16%).

This statement is submitted to express support for the Committee's continued development of two important legislative proposals that will help utilities fully develop generation resources that balance environmental and reliability goals. The legislative proposals are based upon: (1) the Hydropower Regulatory Modernization Act discussion draft by Rep. Cathy McMorris Rogers (R-WA): and (2) the Natural Gas Pipeline Permitting Reform Act, H.R. 161, by Rep. Mike Pompeo (R-KS). Both proposals make critical improvements to licensing and permitting processes so that new hydropower and natural gas generation – two cornerstones of the reliable operation of the nation's power grid – can be brought on line to supply adequate power in the face of new and existing demand. These generation options are urgently needed in order to manage the very difficult choices that will be presented by the Environmental Protection Agency's (EPA's) proposed emissions guidelines for carbon dioxide emissions from existing fossil fuel-fired power plants under Section 111(d) of the Clean Air Act (commonly referred to as the "Clean Power Plan").

Natural Gas Pipeline Permitting Reform Act

APPA is on record supporting H.R. 161, Rep. Pompeo's Natural Gas Pipeline Permitting Reform Act, given the long-term implications of increased use of natural gas for electric generation spurred by EPA regulations, such as the Mercury and Air Toxics Standards, that are driving utilities to retire coal-fired power plants and replace them with natural gas. Also driving this fuel switching is the low cost of natural gas in the U.S., due to increased production, that is making the use of coal for electric generation

uneconomic, particularly when factoring in the regulatory landscape. EPA's proposed Clean Power Plan will further accelerate the shift from coal to natural gas generation. Electric utilities are spending hundreds of millions of dollars to convert existing coal facilities, where possible, to natural gas or to construct new natural gas plants. They are also using natural gas generation to back up variable wind and solar power. However, there is a critical need to build new natural gas pipelines and to improve upon existing infrastructure across the country to ensure this greater use of natural gas can be accommodated.

The Federal Energy Regulatory Commission (FERC) is the federal agency tasked with approving routes for proposed natural gas interstate pipelines. FERC works with a variety of federal, state, and local agencies in the development of environmental reviews of these projects under the National Environmental Policy Act (NEPA). Unfortunately, the Commission lacks the ability to ensure that other federal agencies abide by deadlines related to natural gas pipeline applications. APPA supports the inclusion of language in the discussion draft legislation that reinforces FERC's role as the lead agency for siting interstate pipelines and provides it with the authority to set and enforce natural gas pipeline permitting deadlines. The requirements for all agencies to conduct concurrent reviews and identify issues of concern that could delay compliance with FERC timelines will help expedite the review and approval processes, speeding up the construction of much needed new, interstate natural gas pipelines. In addition, the requirement for FERC to post information on its website on the status of applications requiring multiple federal authorizations will provide much-needed transparency to stakeholders such as public power utilities.

Hydropower Regulatory Modernization

The hydropower licensing process poses a similar set of challenges when it comes to setting and enforcing agency deadlines. APPA supports reforms, such as those proposed by Rep. Cathy McMorris Rogers, and those embodied in the hydropower regulatory modernization discussion draft, that will improve the hydropower licensing process. These proposals position FERC as the lead agency with the ability to establish and enforce deadlines among state and federal agencies involved in the licensing process. Many of APPA's members are members of the National Hydropower Association (NHA), and we would like to associate ourselves with the testimony of John Suloway, who has worked for decades at one of APPA's member utilities, New York Power Authority, and appears before the Subcommittee today on behalf of NHA.

Public power utilities have led in hydropower development in recent years. Today, one hundred public power utilities have FERC-licensed hydropower facilities. Making full use of the nation's hydropower resource is key to ensuring that the nation's grid remains reliable and resilient, and that utilities can meet emission reduction goals. Hydropower is a source of emissions-free base-load power which, unlike variable renewable resources, is available 24/7. Moreover, hydropower's "black start" capability makes it highly valuable through the lens of concerns about cyber and physical security; in instances of outages or disruptions to the grid, hydropower units can cycle back on quickly and become a backbone of full power restoration.

There is a significant potential for new hydropower to be generated at non-powered dams throughout the country, as well as for hydropower output to be dramatically increased in existing hydropower facilities and at water distribution conduits/canals. But there are excessive barriers to tapping this potential; the legislative proposal being considered by the Subcommittee will help to reduce those barriers.

FERC is the primary federal agency responsible for the licensing and relicensing of such non-federal hydroelectric projects, but given the involvement of multiple resource agencies, the licensing process can be lengthy, difficult, costly and uncertain for applicants. Under the Federal Power Act ("FPA"), FERC must establish requirements in conjunction with the license ("conditions") that give "equal consideration" to not only power needs, but also Endangered Species Act requirements, water quality issues, marine navigation, and other public interest concerns. FERC must carefully evaluate many aspects of a hydropower project, but at the same time, state and federal agencies can impose "mandatory conditions" that FERC cannot balance or modify in the public interest. While it is appropriate to consider a broad

array of factors, this process must be streamlined and reformed. Critical new additions to existing hydropower facilities are languishing under bureaucratic and often contradictory processes that can span a decade or more or which simply become too costly. FERC must be given more clear-cut authority to establish deadlines and fulfill its role under the FPA.

APPA supports concepts set forth by the discussion draft that reform the lengthy, duplicative and contradictory regulatory processes for licensing hydropower projects, and looks forward to working with the Subcommittee to continue to build upon and refine the draft. In particular, mechanisms to require all resource agencies to work together under a schedule designated by FERC will reduce waste and improve decision making. APPA also supports the concept of establishing a more manageable mandatory conditioning process, such as requiring resource agencies to more clearly define the objective of each mandatory condition and demonstrating they have appropriately balanced associated "power and non-power" values.

We are pleased that the Subcommittee is taking a fresh look at opportunities to reform licensing and permitting processes for both natural gas and hydropower resources, and look forward to working with the Subcommittee to build upon and refine these proposals. Given the impact of a host of EPA regulations that are leading to the reduced use of coal-fired generation, it is important to adopt policies that will expedite the use of other baseload generation that is reliable and affordable.

Steve Moyer
Vice President for Government Affairs

May 26, 2015

The Honorable Ed Whitfield, Chairman
Subcommittee on Energy and Power
United States House of Representatives
Washington, DC 20515

The Honorable Bobby L. Rush, Ranking Member
Subcommittee on Energy and Power
United States House of Representatives
Washington, DC 20515

Dear Chairman Whitfield and Ranking Member Rush:

On behalf of Trout Unlimited's (TU) more than 150,000 members nationwide, I am writing to provide comments for the record of your May 13, 2015 hearing on Discussion Drafts Addressing Hydropower Regulatory Modernization and FERC Process Coordination under the Natural Gas Act. Our comments are limited to the discussion of the Hydropower Draft and do not include comment on Gas Pipeline permitting or related processes.

Proponents of the Hydropower Draft claim that its intent is to improve the FERC hydropower relicensing process. TU stands ready to continue to work with the Committee and Congress on real, meaningful process reforms, as we have throughout our history. In fact the bill is yet another attempt in a very long line of efforts by some elements of the hydropower industry to dramatically weaken fisheries conservation standards in the Federal Power Act, some of the most useful resource provisions in federal law. Not only does the draft substantially weaken federal standards, but state standards as well. We urge the Committee to reconsider its approach and to work with stakeholders to find a better path forward.

TU has a huge stake in the health of rivers affected by hydropower dams. TU members live, recreate, hunt and fish along the waterways impacted by hydropower development. We partner with agricultural users at non-powered dams and hydropower producers at powered dams to help maintain a balance between various competing water needs. TU has a long history of engagement in hydropower project development and regulatory processes. We have

partnered with utilities and project developers to identify and implement collaborative solutions balancing the needs of fish and wildlife with power production goals.

TU has worked with stakeholders to help pass Rep. Tipton's small hydropower bill (P.L. 113-24). We have engaged in cooperative stakeholder processes to restore valuable fisheries and relicense dams owned by Avista Corporation in northwest Montana and PPL on the Penobscot River, Maine. TU worked with stakeholders to develop and implement the Klamath River Restoration agreements, a tremendous solution for longstanding problems in the Klamath Basin that could have never been achieved under the terms dictated by the provisions of the Hydropower Draft.

TU strongly opposes the Hydropower Regulatory Discussion draft. Among our key concerns, the language of this proposed draft would have the following results:

- Reduce local and regional control over resource protections and priorities by taking authority away from federal and state resource agencies and transferring it to FERC.
- Severely restrict data collection and disadvantage sound science by allowing additional study only when FERC determines that value of data outweighs the financial expense.
- Weaken state and federal authority to ensure safe, timely and effective fish passage around dams and hydropower projects.
- Minimize or eliminate a developer's responsibility to comply with state and federal resource protection laws (like the Endangered Species Act (ESA) and the Clean Water Act (CWA), which will place a greater burden on surrounding businesses and communities.
    - Imposes fisheries and wildlife management costs on commercial fishermen, farmers, taxpayers and local communities by exempting hydropower dam owners from reasonable measures to protect fish and wildlife;
    - Shifts the costs and burdens of meeting state water quality standards off of the hydropower industry and onto municipal water treatment facilities, factories, farmers and taxpayers.
- Mandates an overly restrictive scope of project review, prohibiting FERC or the resource agencies from requiring contribution from a project to ongoing project impacts. This would place the burden back on federal agencies to manage any expense or upkeep of underlying facilities, regardless of any profit to the power operator. This amounts to private profit from public resources - allowing private companies to profit from existing infrastructure with no requirement that those developers contribute to the upkeep or enhancement of the underlying facility or its impacts – handing the profit to the developer and leaving the burden on the public resource and taxpayer.

- De-regulates development of certain classes of hydropower at existing non-powered dams, essentially removing these projects from federal and state oversight through the hydropower licensing process.

Diminished state and federal agency authority in licensing processes.

The proposed language would effectively gut the Federal Power Act's mandate to ensure a balancing between power and non-power interests by transferring key protection determinations away from state and federal resource managers and centralizing that power at FERC. Although the Commission has a skilled staff, the agency does not have the congressional directive to protect the lands and resources that are currently within the jurisdiction of its sister agencies in the Department of the Interior and Commerce, such as fish and wildlife, endangered species, and public lands. These federal resource agencies have local and regional field staff with on the ground knowledge of the resources involved in any particular licensing process. This level of familiarity and connection to the resources helps bring a deeper level of knowledge to the process, which is necessary to optimize a license for all uses.

TU relies on these agencies to protect and restore our fisheries resources and to help ensure equal consideration of non-power values in FERC's licensing processes. Hydropower licenses can last as long as 50 years – the licensing process provides a crucial opportunity to ensure a project will be properly developed and operated to ensure our river resources are preserved for future generations. This opportunity is all the more crucial for re-licensing, as many of our nations' existing hydropower projects were developed before the existence of most major natural resource laws. The relicensing process provides our resource managers the much needed opportunity to ensure these projects are upgraded to meet modern day laws and standards for conservation performance.

Hydropower at non-powered dams.

TU strongly supports focusing on enhancing hydro at existing infrastructure rather than new dam construction for new hydropower production. Focusing on improving and investing in existing infrastructure is the most cost-effective way to bring new power online. However, not all existing dams are appropriate for new hydropower development. Dams that are unsafe or where natural resource impacts outweigh the project benefit should not be exempted from applicable requirements for protection of environmental quality and public safety. The proposed draft would exempt currently unpowered dams, conduits and similar facilities without the opportunity for site specific considerations or review.

Existing law already provides an exemption process for certain categories of projects – including conduit-based developments and hydropower capacity added to non-powered

dams.[1] Both of these exemptions must include mandatory fish and wildlife conditions by federal and state resource agencies. Under the existing exemption process, well designed projects can be processed in less than a year. For a project that is seeking a permanent exemption from FERC's licensing process, that is extraordinarily expedient.

In addition to the existing FERC exemption process, there have been a number of additional efforts aimed at improving the regulatory process for hydropower development at existing federal infrastructure. For example, as highlighted above, in 2013, TU supported Representative Tipton's *Bureau of Reclamation Small Conduit Hydropower and Rural Jobs Act*, which became Public Law No: 113-24. The bill was aimed at improving the process for hydropower development at BOR. We supported this bill because it improved a currently difficult process without sacrificing environmental safeguards. In contrast, the proposed discussion draft will cause more confusion, delay and harmful results.

Overly Restrictive Time Limits.

TU supports the concept of a single, FERC generated timeline to help ensure predictability in the licensing process. However, the proposed language takes this idea too far, imposing potentially arbitrary deadlines that do not account for the agency specific processes or information gathering needs of fellow agencies. This language aims to solve an alleged problem of too much delay by attacking the symptom, not the underlying cause. Rather than a lack of clear timeframes, delays seem more often connected to agency budget constraints or other administrative hurdles.

For example, agency authorizations are often delayed where the agency is unable to obtain the necessary information as a part of the FERC study process. Rather than further restricting the agency, delay could be minimized by improving coordination at the study phase to ensure all agencies – not just FERC – are able to obtain the necessary information to complete review and processing of necessary permits and authorizations without additional delay for data collection. Similarly, for agencies struggling with backlogs due to budget constraints, installing a new time limit will not solve the problem. Rather, these time constraints are likely to exacerbate the problem – forcing states to either (a) deny permits, causing delay for the applicant; (b) issue a permit with potentially onerous requirements as a precautionary approach when faced with insufficient resources to make a more informed decision; or (c) waive their authority, leaving the affected waterways unprotected at the state level.

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[1] Section 405(d) of the Public Utility Regulatory Policies Act, as amended by the Hydropower Regulatory Efficiency Act of 2013 authorizes the Commission to grant exemptions for hydropower projects added to existing dams with an installed capacity of up to 10mw, subject to certain restrictions.

A better way forward.

We support common-sense reforms that will improve administrative processes without sacrificing resource protections. Rather than minimizing the ability of regional resource managers to include and enforce resource protection and enhancement measures, we suggest that the existing process could be improved through more effective agency coordination and communication, additional process support to first-time applicants, and through enhancements to the power purchase and power interconnect processes.

We anticipate continued activity and interest from this committee and its members related to hydropower regulatory improvements or reforms. As this discussion moves forward, we encourage the committee to seek broader input on the underlying goals of this proposal – i.e., what reforms, if any, are needed - and to work with agencies, industry and members of the affected public to design more balanced solutions to any problems identified. TU is ready to work with representatives from industry, resource agencies, the regulatory Commission and members of this committee to identify process improvements that do not sacrifice the protection, mitigation and enhancement of our nations' rivers and streams.

Thank you for the opportunity to provide comments on the draft hydropower bill.

Sincerely,

Steve Moyer
Vice President, Government Affairs
Trout Unlimited

May 26, 2015

The Honorable Edward Whitfield
Chairman
Subcommittee on Energy and Power,
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Bobby L. Rush
Ranking Member
Subcommittee on Energy and Power,
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

Statement for the record of the May 13, 2015 hearing on *Discussion Drafts Addressing Hydropower Regulatory Modernization and FERC Process Coordination under the Natural Gas Act*

Chairman Whitfield and Ranking Member Rush:

The Modesto Irrigation District (MID) and Turlock Irrigation District (TID) of California appreciate the opportunity to express their strong support for the overarching principles embodied in the discussion drafts by the Committee and by Representative Cathy McMorris Rodgers to modernize and improve the hydropower licensing and relicensing process.

MID and TID are co-owners and licensees of the Don Pedro Project on the Tuolumne River in the Central Valley of California. Owned 31.54% by MID and 68.46% by TID, the project was placed into service in 1971. It consists of a 2,030,000 acre-foot (AF) reservoir and a powerhouse capable of generating 203 megawatts. The Federal Energy Regulatory Commission (FERC) issued the Districts a license for the original Don Pedro Project in 1966, and that license expires on April 30, 2016. Since 2009, the Districts have been working towards acquiring a new license following the procedures under FERC's Integrated License Process (ILP). Following extensive consultation with FERC, resource agencies, Tribes, and conservation groups, the Districts filed a draft license application on November 26, 2013, and a final license application with FERC on April 28, 2014.

In addition to the hydropower generated by the Don Pedro Project, MID and TID meet the needs of their electric power customers with a variety of generation, including wind, solar and natural gas.

To date, the Districts have spent six years and more than $20 million on the FERC relicensing process for the Don Pedro Project. The Districts expect to spend several more years and millions of dollars more in the expectation of a new license that will allow MID and TID to continue to cost-effectively operate the very same hydropower facility that they have been operating for the last 45 years. Because MID and TID are public agencies, the costs associated with the relicensing process, and meeting any additional conditions imposed by a new license, will be borne by the communities we serve.

Securing a new FERC license is not only crucial to providing California's Central Valley with a clean and sustainable energy supply, it is also a fundamental component of the Districts' long-term effort to meet the State's aggressive greenhouse gas reduction goals and to fulfill other energy and environmental mandates. Although large hydro systems are not included within California's regulatory definition of renewable energy, Don Pedro's generation emits no greenhouse gases, so it helps limit our carbon footprint. Moreover, Don Pedro is our most economical energy source and, because of its operating flexibility, it is a critical resource for meeting demand and stabilizing the regional grid.

The Districts agree with the testimony of the National Hydropower Association (NHA) that *"the time, cost and risks associated with licensing hydropower projects are not commensurate with the impacts when compared with other forms of generation."*[1] In our experience, gained first-hand over the last six years, the cost of licensing and relicensing hydropower projects is in large part driven by two factors:

- the large number of very costly studies of natural resources *potentially* affected by the operation of the project; and
- the amount of time and money devoted to carefully developing the study scopes and methods, all done in close concert with resource agencies and interested parties, to ensure that studies are performed to strict scientific standards.

As part of the relicensing process for Don Pedro, MID and TID have developed appropriate study plans and performed more than three dozen separate studies,[2] with the cost of some individual studies exceeding $1 million. These studies examine the Don Pedro project's potential effects on, among other values, historic properties, Native American cultural sites, public recreation, federally protected species, state protected species, water quality, water temperature, instream flow, resident and anadromous fish populations both in the reservoir and downstream of the project, terrestrial species and regional socioeconomic resources. Each of these 38 studies was developed by the Districts in consultation with multiple federal and state agencies, numerous interest groups during countless meetings and conference calls, which in combination generated thousands of pages of information and comments. In addition, the Districts have held more than a dozen public workshops on the studies and their findings since 2013. After each study is performed, a draft report is shared with all the participants in the relicensing process to provide an additional opportunity for review and comment. The Districts then respond to every comment, modify the draft report and issue a final report.

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[1] Written Testimony of John Suloway on behalf of The National Hydropower Association before the U.S. House of Representatives Energy and Commerce Committee Power and Energy Subcommittee Regarding Discussion Drafts Addressing Hydropower Regulatory Modernization and FERC Process Coordination under the Natural Gas Act, May 13, 2015

[2] Studies and all other documents related to Don Pedro Project – FERC No. 2299 – are available here: http://www.donpedro-relicensing.com/default.htm

The great amount of care, time and money committed by the Districts, and the scientists and engineers we retained, to performing rigorous studies using accepted methods vetted by all the relicensing participants would be well worthwhile if the results were then actually used by the participants to inform their opinions and the recommended terms and conditions that they want FERC to impose on the new license.

However, in our case, these carefully executed studies have been routinely ignored or worse yet, criticized as faulty, when the results do not confirm participants pre-conceived notions or beliefs about environmental impacts. We have found the exception to this is the FERC staff itself, which give every indication of being objective reviewers that use and reference all of the resulting studies, and do not seem to have pre-conceived notions about project impacts.

Both MID and TID agree with the NHA assertion that demands for numerous studies and extensive information "are sometimes used as a negotiating tactic" by interests groups and resources agencies seeking to force acceptance of their goals, which may not be in the broader public interest. In our experience to date, once the scientific studies are completed, resource agencies and interest groups have generally not accepted study results that run counter to their interests, agendas, or agency missions, no matter how much scrutiny the study plan and study methods were given by the same entities prior to the performance of the study.

It has become apparent to the Districts during this relicensing process that the extensive information developed through rigorous study and planning is ignored and discounted when it does not serve the "needs" of some interested parties. This refusal to consider the science can and does occur because certain resource agencies have the ability to unilaterally override FERC's objective review of the record (mandatory conditioning agencies). Such mandatory-conditioning resource agencies, and the interest groups whose goals are closely aligned with theirs, only have to cite the slimmest of evidence to impose costly and unwarranted measures and operating restrictions on a licensee, even if the overall weight of the evidence does not support the measure. It is only FERC that weighs the entire record of evidence that licensees have spent many millions of dollars developing under rigorous rules and guidelines. Under these circumstances, it is imprudent public policy to allow a resource agency with a narrow mission and armed with only the slightest bit of evidence to drive national energy policy and, in the case of the Districts, national agricultural and water supply policy.

The discussion drafts would restore FERC's ability to do what it is well suited to do -- fairly balance a variety of public interests using all the information before it -- by giving FERC exclusive authority to enforce and administer all license terms and conditions. The importance of this improvement to federal licensing and regulation of hydropower projects cannot be overstated.

The Districts' experience is that resources agencies are always inclined to use their essentially absolute conditioning authority. The overall result is a significant distortion of the intent of the Federal Power Act's mandate that FERC's licensing decisions give "equal consideration" to a diversity of interests affected by proposed and existing hydropower projects. When any single-purpose agency can impose its agenda without regard to other legitimate public purposes and interests, "equal consideration" has little meaning. Vested with mandatory conditioning authority, resources agencies, have no incentive to consider the entire record of evidence, and are instead inclined to cherry-pick the record for bits of information that appear to support their mission. Furthermore, this absolute conditioning authority, independent of FERC's authority, precludes fair negotiation with other stakeholders, and redirects resources to less environmentally beneficial and practical

purposes. In the face of mandatory conditions, FERC is unable to offer recourse to adversely affected stakeholders, and thus is unable to fulfill its "equal consideration" mandate and its overall duty to serve the public interest.

The Districts have found while resource agencies have knowledge that should be included in the licensing process, however they should be encouraged to consider the full record before FERC, just as FERC does. The discussion drafts recognize and respect the missions of the resources agencies and their importance in the licensing process. By making FERC the final decision-maker, the drafts would ensure that the resources agencies engage more fully, in a timely fashion and on an equal footing with other stakeholders. The likely result is not less protection of environment or fish, but better, more practical protections with a broader base of stakeholder support.

Modesto and Turlock Irrigation Districts have the highest regard for the professionalism and dedication of the FERC staff. It is the regulatory process, not the agency that needs to be fixed.

We look forward to working with the Committee and with Rep. McMorris Rodgers to further refine your proposals to improve the federal hydropower licensing process by increasing transparency and accountability and reducing redundancy and inefficiencies.

Sincerely,

[redacted]

Roger VanHoy, P.E.
General Manager
Modesto Irrigation District

[redacted]

Casey Hashimoto, P.E.
General Manager
Turlock Irrigation District

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

2125 RAYBURN HOUSE OFFICE BUILDING
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Majority (202) 225-2927
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June 1, 2015

Ms. Ann F. Miles
Director of the Office of Energy Projects
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Dear Ms. Miles:

Thank you for appearing before the Subcommittee on Energy and Power on May 13, 2015, to testify at the hearing entitled "Discussion Drafts Addressing Hydropower Regulatory Modernization and FERC Process Coordination under the Natural Gas Act."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on Wednesday, June 17, 2015. Your responses should be mailed to Will Batson, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515 and e-mailed to Will.Batson@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Ed Whitfield
Chairman
Subcommittee on Energy and Power

cc: The Honorable Bobby L. Rush, Ranking Member, Subcommittee on Energy and Power

Attachment

FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

June 17, 2015

The Honorable Ed Whitfield, Chairman
Subcommittee on Energy and Power
Committee on Energy and Commerce
U.S. House of Representatives
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Representative Whitfield:

Thank you for the opportunity to appear before the Subcommittee on Energy and Power on Wednesday, May 13, 2015. Attached are my responses to the Supplemental Questions for the Record.

Sincerely,

[redacted]

Ann F. Miles
Director, Office of Energy Projects

Additional Comments for the Record
Ann F. Miles

The Honorable Ed Whitfield

1. **You state on page 16 of your written testimony: "It would be a significant change if the Commission, rather than the land-managing agencies, were to decide if conditions imposed by those agencies adequately protected reservations. I do not support this change."**

   A. Your statement suggests that the discussion draft requires the Commission to decide if an agency's 4(e) condition is adequate. Assuming the intent of the discussion draft is not to require the Commission to evaluate the agency's condition, but simply to decide if an applicant or other party's proposed alternative condition is equal to or better than the level of protection established by the agency in its 4(e) condition, would you still oppose this provision in the discussion draft? If so, why?

   Answer: The agencies that have been tasked by Congress to manage federal lands are in a strong position to assess whether proposed alternative conditions would provide the same level of protection to the lands they manage as the conditions that the agencies have proposed, and I am not sure that it would be helpful for such a judgment to be made by the Commission. However, the Commission is required by the Federal Power Act (FPA) to balance all aspects of the public interest. In its environmental analysis, the Commission independently evaluates the benefits and costs of all proposed, recommended, and required measures, including federal agency conditions filed under sections 4(e) and 18 of the FPA and conditions included in water quality certifications issued by states under section 401 of the Clean Water Act (CWA). Accordingly, if the draft were to be clarified to the effect that, in making decisions on whether and/or what conditions to include in a license, the Commission has the authority to require an alternative condition, including one developed by Commission staff, in lieu of an agency condition imposed under federal law, I would support that revision.

   B. Do you believe that federal land management agencies are better qualified than FERC to determine if a proposed alternative condition would cost less or improve electric generation compared to an agency's condition, or would you say that FERC is better qualified to make these determinations?

   Answer: I believe that the Commission is qualified to make these determinations and does so as to all alternatives that it considers in its environmental documents. Federal land management agencies should be able to make these determinations, whether based on the Commission's environmental document or their own analysis.

   C. Isn't it true that Section 4(e) of the Federal Power Act requires FERC, not the land management agency, to determine whether a project will be interfere or be inconsistent with the purpose of a federal reservation? And in making that assessment, haven't courts held that FERC is required to independently evaluate a reservation's purposes?

   Answer: Yes. Section 4(e) of the FPA provides that the Commission can issue a license for a project located within a federal reservation only if it finds that the license will not interfere or be inconsistent with the purpose for which such reservation was created or acquired, and the courts have held that the Commission must make that determination independently. Pursuant to the Supreme Court's decision in U.S. v. New Mexico, these purposes are watershed protection and timber production.

D. You also say in your testimony that "the Commission staff, in its NEPA review, regularly assesses the adequacy of all environmental measures proposed, recommended, or required." Do you agree that FERC is fully capable of assessing the levels of environmental protection provided by various, alternative measures? If not, why not?

Answer: Yes.

2. On page 17 of your testimony, you suggest that the trial-type hearing procedures be eliminated from the Federal Power Act in favor of dispute resolution processes laid out in the Commission's regulations, the Commission's Dispute Resolution Service, and existing hearing opportunities.

A. How many times since 2005 has the Commission referred a dispute under Section 33 of the Federal Power Act over a Section 4(e) condition or Section 18 fishway prescription to its Dispute Resolution Service?

Answer: None. However, since 2005, the Dispute Resolution Service (DRS) has received 158 inquiries about hydropower matters. Most were referred to other Commission Offices for response; however, sixteen of the inquiries stayed in DRS and were resolved through the Alternative Dispute Resolution Process.

B. How many times since 2005 has the Commission set a dispute over material facts in a hydroelectric license proceeding for a trial-type hearing before a FERC Administrative Law Judge? How many times has the Commission denied a request for trial-type hearing during this period?

Answer: The Commission has not ordered a trial-type hearing before an Administrative Law Judge in a hydroelectric licensing proceeding since 2005. I am not aware of how many times such a hearing has been requested, but I do not believe that it has been often.

C. Since the Commission staff is not required to be a party to the Section 4(e) and Section 18 trial-type hearings, assigning the hearings to FERC Administrative Law Judges would not create a substantial additional workload and increased administrative costs for the Office of Energy Projects, correct?

Answer: Not necessarily. The Commission's environmental, engineering, and legal staffs would likely be asked to provide significant technical assistance to administrative law judges assigned to these cases. Also, the Commission itself might be called upon to resolve procedural issues, as well as consider requests for rehearing of the results of trial-type hearings, which could occupy substantial staff time.

Wouldn't any administrative costs associated with the hearings be recovered from licensees through FERC annual charges?

Answer: Yes, but because the Commission recovers its costs through general charges to regulated entities, entities that did not request trial-type hearings would ultimately be charged for a share of the costs caused by those that did request hearings.